

NOTICE OF PUBLIC MEETING  
CITY COUNCIL  
CITY OF BONITA SPRINGS  
OFFICIAL AGENDA  
WEDNESDAY, JULY 21, 2021  
**5:30 P.M.**  
CITY HALL  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FLORIDA 34135

To submit your public comment in writing, please email the City at [CITYMEETINGS@CITYOFBONITASPRINGS.ORG](mailto:CITYMEETINGS@CITYOFBONITASPRINGS.ORG) Any written public comment must be received by 2:00 P.M. July 21, 2021.

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1. Call to order:
2. Invocation:
3. Pledge of Allegiance
4. Roll Call:
5. Approval of Agenda
6. Mayor's Welcome
7. Appearance by State Representative Adam Botana
8. Public Comment on Agenda Items
9. Zoning and land use items public hearings:
  - A. A Zoning Resolution of the City of Bonita Springs, Florida; considering a request for a Special Exception to allow a 2-phased expansion of enrollment of an existing schools, noncommercial, other use (Grace Classical Academy) on approximately 4.65 +/- acres within the agricultural (AG-2) zoning district at 3971 Via Del Rey, Bonita Springs, FL 34134; providing for an effective date. (Greensheet No. 21-07-149)
  - B. A Zoning Resolution of the City of Bonita Springs, Florida; considering a request for a Special Exception within the U.S. 41 Overlay to allow a school, noncommercial, other use (Discovery Day Academy) on approximately 1.5 +/- acres within the Community Commercial (CC) zoning district, located at 25355 S. Tamiami Trail, Bonita Springs, FL 34135; providing for an effective date. (Greensheet No. 21-07-148)

**Short recess, if needed**

10. Consent Agenda: (Note: Items on the Consent Agenda will be considered as one unless a specific item is removed by a Council Member for separate discussion.)
  - A. Approve overhead to underground Relocation Agreement for West Terry Street Project with Comcast in the amount of \$288,847.60, converting poles to underground facilities along West Terry Street. (Greensheet No. 21-07-141)

- B. Re-approve contract amendment #1 between the City and the Florida Department of Economic Opportunity (FDEO) for the Community Development Block Grant – Disaster Recovery (CDBG-DR) IBE/Quinn/Downs/Dean West of Imperial Parkway Drainage Project – Contract Agreement #IR015) (Greensheet No. 21-07-152)
  - C. Adopt Resolution confirming the selection committee’s recommended ranking and authorize staff to negotiate with the top ranked consultant, StructurePoint, Inc. for the Goodwin Street Pedestrian and Drainage Improvement Project (RFQ#21-03). (Greensheet No. 21-07-153)
  - D. Approve the amendment of the lease agreement with Creative Expressions Studio and Gallery, LLC for the use of Artist Cottage #4 for another one-year term. (Greensheet No. 21-07-150)
11. Opportunity for City Council comments on Consent Agenda Items.
12. Proclamations and Presentations:
- A. Update by Capitol Strategies on the 2022 Legislative Session and discussion of City’s Legislative Priorities. (Greensheet No. 21-07-146)
13. Mayor and Council Member Items:
- A. Appoint one member to the Outreach Advisory Committee. (Purdon; Greensheet No. 21-07-142)

**Short recess, if needed**

14. City Attorney’s Items
- A. Discussion ranking revised proposals for the Imperial Crossing development opportunity. (Greensheet No. 21-07-156)
15. City Manager’s Items
- A. Adopt proposed millage rate for fiscal year 2021-2022. (Greensheet No. 21-07-155)
  - B. Appoint a City Council Member as the voting delegate for the City of Bonita Springs, for the Florida League of Cities Conference scheduled for August 12-14, 2021 at the World Center Marriot, Orlando, Florida. (Mayor Steinmeyer; Greensheet No. 21-07-144)
  - C. Direction to staff regarding professional services agreement with Capitol Strategies Consulting for legislative and agency lobbying services. (Greensheet No. 21-07-145)
16. Mayor and Council Member Reports
17. Approval of Minutes: 06/16/21
18. Public Comment
19. Adjournment

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ANY PERSON REQUIRING SPECIAL ACCOMMODATIONS AT ANY OF THE MEETINGS BECAUSE OF A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT LISA ROBERSON, FINANCE DIRECTOR, AT 239-949-6262, AT LEAST 48 HOURS PRIOR TO THE MEETING. IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSON MAY NEED TO

ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS TO BE MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.

**REQUESTED MOTION:** A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) ON APPROXIMATELY 4.65 +/- ACRES WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT AT 3971 VIA DEL REY, BONITA SPRINGS, FL 34134; PROVIDING FOR AN EFFECTIVE DATE.

**REQUESTOR:** Mary Zizzo, Esq., Planner II, Community Development

**AGENDA:** Zoning and Land Use Items public hearing

**STRATEGIC PRIORITY:** No

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**BACKGROUND:** The requested special exception (SEPE20-76117-BOS) is to allow an increase in enrollment for an existing Noncommercial School, Other use (Grace Classical Academy). A special exception is required within the AG-2 (Agricultural) zoning district. Currently, the School is permitted to enroll 48 students maximum. The School leases a building within the Family Life Center at New Life Church at 3971 Via Del Rey, a place of worship permitted by right within the zoning district, which also has a daycare operating during the week, permitted by right.

The School requests a two-phased enrollment:

Phase 1: 90 students within the existing building footprint.

Phase 2: 160 students within the existing building footprint and future construction of portable/modular classrooms.

Staff evaluated the request based on the special exception criteria identified in LDC 4-131(c)(2) and has determined the request to be compatible, based on the information provided. The Applicant has agreed to specific conditions of approval that have been outlined in the staff report and provided in the draft resolution.

The Zoning Board for Land Use Adjustments reviewed the request on June 29, 2021, and voted 5-2 (1 abstention, treated as denial) to approve the special exception request, as conditioned and amended within the Zoning Board Hearing. Concerns raised by the public are included within the Zoning Board Meeting Minutes and pertain mostly to cut through traffic not associated with the special exception request.

To conserve paper and resources, the full application backup will be viewable online only with the full agenda packet. Please contact the Clerk's Office for paper copy requests.

**STAFF RECOMMENDATION:** Approve the request as conditioned.

**ATTACHMENTS:** 1. Draft Resolution, 2. Zoning Board Meeting Minutes from 6-29-2021, 3. Staff Report, and 4. Application Backup

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: John Dulmer

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

CITY OF BONITA SPRINGS  
ZONING RESOLUTION NO. 21 – XX

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) ON APPROXIMATELY 4.65 +/- ACRES WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT AT 3971 VIA DEL REY, BONITA SPRINGS, FL 34134; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Grace Classical Academy, Inc. has filed an application for a special exception to increase enrollment for their school, noncommercial, other use (private school) in the Agricultural (AG-2) zoning district; and

**WHEREAS**, the subject property is located at 3971 Via Del Rey, Bonita Springs, 34135; and

**WHEREAS**, a Public Hearing was advertised and heard on June 29, 2021 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals (“Zoning Board”) on Case SPE20-76117-BOS who recommended approval (5-1-1) after giving full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all parties; and

**WHEREAS**, City Council at their July 21, 2021 zoning meeting considered the record of the Zoning Board on Case SPE20-76117-BOS, as well as a transcript of the Zoning Board hearing submitted as part of the City Council hearing record, and gave full consideration of the Staff Recommendation, the evidence and testimony, including the expert opinion of the Applicant’s agents.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Bonita Springs, Lee County, Florida:

**SECTION ONE: APPROVAL OF REQUEST**

City Council of Bonita Springs hereby approves the request for a special exception with the following conditions:

Conditions:

1. This approval is for a two-phase expansion of enrollment.
  - a. Phase 1: 90 students maximum. The site shall function in accordance with the Phase 1 stacking plan.
  - b. Phase 2: 91-60 students maximum. The site shall function in accordance with the Phase 2 stacking plan, which includes additional site improvements as depicted thereon. This plan may be reassessed at the time of local development order for compliance and functionality based upon the performance and data provided from the existing usage and/or the construction of the proposed entrance from Vanderbilt Drive to serve the adjacent parcel, to the south.
2. At all times, parking shall comply with the LDC, unless a reduction or shared parking agreement is approved.
3. All on-site vehicular circulation shall only utilize paved drive aisles and shall enter and exit the site via Via Del Rey and Vanderbilt Drive. A staff post shall be located at these entrances to facilitate the flow of traffic to prevent a back up into any street.
4. At no time shall vehicle queues extend onto roadways, including Via Del Rey and Vanderbilt Drive or block any access driveway to the site.
5. At the time of school enrollment of 91 students, the Phase 2 stacking plan attached to the Special Exception resolution will be implemented. The school may administratively request an alternate stacking plan or threshold above 90 students to determine if the Phase 1 stacking plan can accommodate more than 90 students, and if so, establish a new student enrollment limit prior to implementing the Phase 2 stacking plan.
6. As contemplated within the Traffic Impact Statement (TIS), all ingress and egress for the school function shall utilize Vanderbilt Drive.
7. An on-site directional sign shall be installed to facilitate the student pick-up and drop off in accordance with the approved Student Drop-Off and Pick-Up Exhibit.
8. During afternoon student dismissal period (i.e., 2:45-3:15 PM), school personnel shall place traffic cones and/or flaggers across the east/west drive aisle to Mango Drive to provide direction in accordance with the approved Student Drop-Off and Pick-Up Exhibit.
9. The school shall provide proof of enrollment on a quarterly basis to the City of Bonita Springs Community Department to ensure compliance. These shall be submitted on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> annually. This report shall include the number of students enrolled. Failure to submit this report shall result in a revocation of occupancy.

10. Private school hours of operation are limited to Monday through Friday, 8 AM- 5PM, with occasional weekend events.
11. Should the operation not function according to the stacking plan, or additional safety concerns arise from the implementation of the plan, after three documented observations, this special exception shall return to City Council for reconsideration.
12. Collier County Staff will review the future local development order Traffic Impact Statement (TIS) and site plans and provide review comments. The TIS must include full operational analysis based on built out conditions, including the following:
  - a. Turn lane warrants based on Collier County ROW standards,
  - b. Documentation of existing conditions, and
  - c. Conclusion pertaining to existing constraints and/or proposed improvements.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of special exception, Bonita Springs City Council makes the following findings and conclusions:

1. The Applicant has proven entitlement for the requested special exception by demonstrating compliance with the Bonita Springs Comprehensive Plan; and
2. The Applicant has specifically proven:
  - i. Exceptional or extraordinary conditions exist which warrant the proposed use.
  - ii. The request is consistent with the goals, objectives, policies and intent of the Bonita Plan.
  - iii. The request meets all performance and locational standards set forth.
  - iv. Will protect, conserve or preserve environmentally critical areas and natural resources.
  - v. Will be compatible with existing or planned uses.
  - vi. Will not cause damage, hazard, nuisance or other detriment to persons or property.
  - vii. In compliance with all general zoning provisions, supplemental regulations and performance standards pertaining to the use.
  - viii. No physical constraints, hazards or nuisances which are detrimental to the health and safety of students and to the general operation of the school exist.

**SECTION TWO: INCORPORATION OF RECORD**



## NOTICE OF PUBLIC HEARING

Notice is hereby given that at 5:30pm, Wednesday, July 21st, 2021, the Bonita Springs City Council will hold public hearings in the Bonita Springs City Hall, 9101 Bonita Beach Road, Bonita Springs, Florida 34135, to consider adoption of recommendations made by the Zoning Board for Land Use Hearings and make a final decision on the following case:

### A. SPE20-76117-BOS, GRACE CLASSICAL ACADEMY SPECIAL EXCEPTION

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) ON APPROXIMATELY 4.65 +/- ACRES WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT AT 3971 VIA DEL REY, BONITA SPRINGS, FL 34134; PROVIDING FOR AN EFFECTIVE DATE.

### B. SPE21-78485-BOS, DISCOVERY DAY ACADEMY SPECIAL EXCEPTION

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION WITHIN THE US 41 OVERLAY TO ALLOW A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) ON APPROXIMATELY 1.5 +/- ACRES WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT, LOCATED AT 25355 S. TAMIAMI TRL, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE.

To submit your public comment in writing, please email the City at [CITYMEETINGS@CITYOFBONITASPRINGS.ORG](mailto:CITYMEETINGS@CITYOFBONITASPRINGS.ORG). Any written public comment must be received by 12:00 P.M. on July 21, 2021.

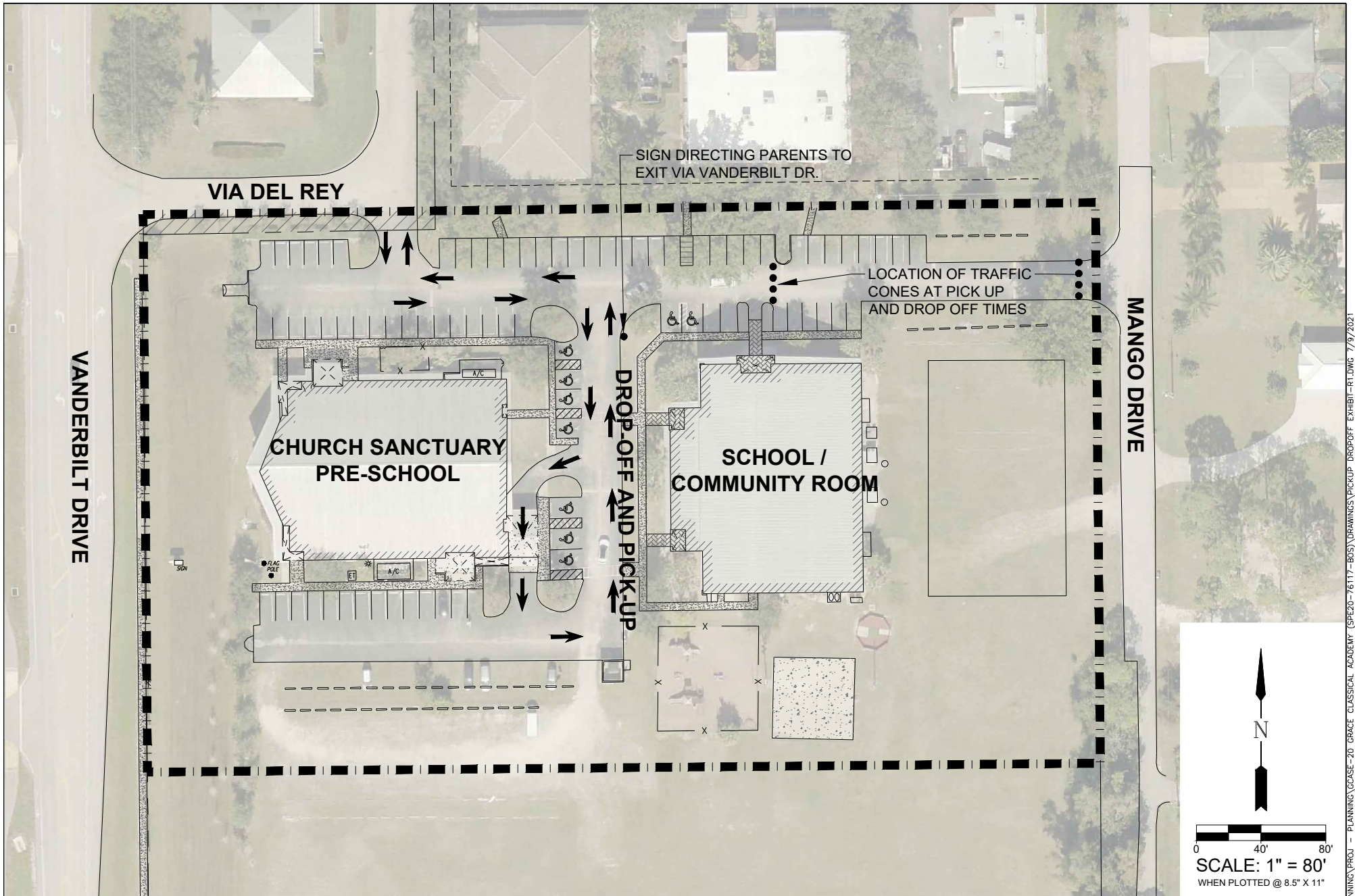
[CLICK HERE](#) to watch the meeting online, or visit the City's website at [WWW.CITYOFBONITASPRINGS.ORG](http://WWW.CITYOFBONITASPRINGS.ORG) and click "How do I?" and then click "Watch a meeting live" to access the live stream.

Interested parties may also attend the public hearing in person to provide comments in accordance with the City's code or as those provisions may be modified by the City Council.

**If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such person may need to ensure that a verbatim record of the proceeding is to be made, to include the testimony and evidence upon which any such appeal is to be based.**

**Any person requiring special accommodations at any of the meetings because of a disability or physical impairment should contact Lisa Roberson, Finance Director, at 239-949-6262, at least 48 hours prior to the meeting.**

# ATTACHMENT B



**LEGEND**



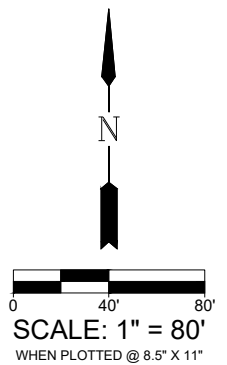
**GradyMinor**

O. Grady Minor and Associates, P.A.  
3800 Via Del Rey  
Bonita Springs, Florida 34134

Civil Engineers • Land Surveyors • Planners • Landscape Architects  
Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266  
Bonita Springs: 239.947.1144 [www.GradyMinor.com](http://www.GradyMinor.com) Fort Myers: 239.690.4380

*GRACE CLASSICAL ACADEMY*

SPECIAL EXCEPTION  
STUDENT DROP-OFF/PICK-UP EXHIBIT



SCALE:	1" = 80'
JOB CODE:	GCASE-20
DATE:	JULY 9, 2021
FILE NAME:	PICKUP DROPOFF EXHIBIT-R1
SHEET	1 OF 1

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**City of Bonita Springs Board  
for  
Land Use Hearings & Adjustments and Zoning Board of Appeals  
MINUTES  
Tuesday, June 29, 2021  
9:00 A.M.**

**I. CALL TO ORDER.**

Chairman Anthony Rascio called the meeting to order at 9:02 A.M.

**II. INVOCATION.**

Board Member Russ Winn furnished the invocation.

**III. PLEDGE OF ALLEGIANCE.**

Chairman Anthony Rascio led the Board in the Pledge of Allegiance.

**IV. ROLL CALL.**

Members in attendance: Chairman Anthony Rascio, Board Member Gerald Benson, Board Member Bruce Galloway, Board Member Gary Gambrell, Board Member Ben Hershenson, Board Member Lynda Waterhouse, Board Member Russ Winn.

**V. APPROVAL OF MINUTES: May 18, 2021.**

Board Member Bruce Galloway motioned for approval of the minutes; Board Member Russ Winn seconded; motion passed unanimously.

**VI. SELECTION OF A VICE-CHAIRMAN.**

Chairman Anthony Rascio postponed discussion until the next meeting in order to provide the two new Board Members time to acquaint themselves with all committee members.

**VII. PUBLIC HEARINGS.****A. CASE NAME: GRACE CLASSICAL ACADEMY SPECIAL EXCEPTION (SPE20-76117-BOS)**

A SPECIAL EXCEPTION REQUEST FOR A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT.

- Board Member Gary Gambrell expressed concern that the Zoning Board had only been given one week to review the packets, which he believed was insufficient time for proper review. He made a motion to hold off on discussion until the next meeting. Chairman Rascio stated that the time given was within the usual time frame and felt the cases too important to wait another month for discussion.

**VIII. SWEARING IN.**

- City Attorney Derek Rooney placed all witnesses under oath.

**1. APPLICANT PRESENTATION – CASE A.****Presenters:**

D. Wayne Arnold, Q. Grady Minor & Associates, P.A.

- Mr. Wayne Arnold provided a presentation (copy in Clerk's file) outlining the special exception request to allow an expansion of the K-8 private school, Grace Classical Academy. The site was previously approved for 48 students. The Land Development Code (LDC) allowed Lee County noncommercial schools by right in the AG-2 district, all others by special exception only. The Applicant was granted a temporary use for 64 students total, expiring on August 27, 2021.
- The request included a two-phased expansion. The first phase requested was to enroll 90 students within the existing Family Life Center building, and the second phase requested was to enroll 160 students, within the existing Family Life Center building and construction of portable or modular classrooms in the rear of the property. A preliminary conceptual site plan was provided.
- Mr. Arnold provided discussion points on Operational Changes such as access to Mango Drive. Two neighborhood meetings were held to address the traffic concerns. Phase 1 and 2 stacking and Special Exception criteria were discussed.
- Chairman Anthony Rascio questioned how the locations for the cones were chosen. He suggested that to avoid confusion, it might make more sense to place the cones closer to Mango Drive. Mr. Arnold replied that it could be done with a second set of cones.

**2. STAFF REPORT.**

- Ms. Mary Zizzo, Community Development, provided the staff presentation (copy in Clerk's file) by reviewing the Special Exception request and areas of agreement. Staff recommended approval subject to the conditions outlined in the report. The location and site plan were

reviewed. Ms. Zizzo stated that pick-up and drop-off operation was observed to ensure it was operating as proposed.

- Staff found that the proposed use was complimentary to the Place of Worship use. Additionally, the proposed expansion was sensitive to the nearby residential uses, requiring all school traffic to utilize Vanderbilt Drive for ingress and egress. A comprehensive review of the Special Exception findings was also given.
- Ms. Zizzo provided an overview of Phase 1 and 2 Stacking Plans and the Circulation Plan. The presentation concluded with staff's final recommendations.
- Chairman Rascio asked to review Recommendation Number 4, wanting assurance that the number of vehicles would be enough to ensure that no queue would extend onto the roadways. Ms. Zizzo responded in the affirmative, adding that if the site was not functioning the way it had been proposed, then the applicant would need to make site improvements earlier on to utilize more of the site to accommodate all the vehicles.
- Chairman Rascio sought clarification on Recommendation Number 6 and if it referred only to Phase 2. Ms. Zizzo stated it applied to both Phase 1 and 2 to and was worded to assure that Mango Drive would not be utilized. Chairman Rascio asked about a directional sign, and Ms. Zizzo used the Circulation Plan to show the location for the "No Right Turn" sign. Chairman Rascio asked about Recommendation Number 8 inquiring if staff would be responsible for monitoring compliance. Ms. Zizzo stated the expectation was for staff to maintain compliance.
- Chairman Rascio inquired about Recommendation Number 9 and if any thought had been given to a more frequent proof of enrollment rather than annually. Ms. Zizzo stated that typically, annual enrollment was easier to monitor but offered to accommodate. Chairman Rascio requested a quarterly enrollment submission provided that Community Development design an appropriate form for the school administrator. Ms. Zizzo replied in the affirmative.
- Chairman Rascio questioned who would be responsible for observing appropriate operation of the stacking plan referred to in Recommendation Number 11. Ms. Zizzo stated City staff would be the observers and report feedback accordingly.
- Board Member Bruce Galloway sought clarification in separating the impact between the two uses on the site. Ms. Zizzo explained that during the week it would be for school use and on the weekend, it would be church use. Grace Academy Principal, Amy Mauriello, and New Life Church Pastor, James Julian, both spoke about their respective uses.

#### **IX. PUBLIC COMMENT.**

- Resident Quinn Ruelle, President of the Vanderbilt Office Park Owner's Association, expressed concern about the amount of traffic in the area during season and did not see how it could be monitored appropriately. He believed the expanded use to be excessive for the site.
- Resident of Mango Drive, Marianna Toledo, questioned the "End of City Maintenance" sign located on her street, and who maintained that patch of area of Mango Drive. She expressed

concern over increased traffic in the area over time. Ms. Toledo stated her concerns about regulation of the road. City Attorney, Derek Rooney, explained the meaning of the sign in question and the regulation of uses.

- Resident of Mango Drive, Cathy Dimes, stated she offered residents of the street to pay for a gate at the church to close off the road.
- Resident of Mango Drive, Donna Howell, expressed concern over the increased traffic and speed of those going to the church or school. She believed the road to be dangerous.
- Resident of Mango Drive, Diana Toledo, commented that the area used to be balanced and a quiet street. She believed the character of the area was changing in a negative way.

*End of Public Comment.*

- Mr. Arnold responded to comments stating that Applicant had met the criteria for the conditional use and felt the traffic impacts were negligible. He confirmed that he was in agreement with the staff's recommendations.
- Board Member Bruce Galloway voiced concern about the vote as Special Exceptions were all about impact. He questioned if Public Works had reviewed the traffic study. Mr. John Dulmer, Community Development, replied that Public Works did a cursory review, and staff's Transportation Engineer had approved the study confirming the conditions were appropriate for the use.
- Item A - Chairman Anthony Rascio called for a motion to approve with the revised conditions as agreed to by the Applicant, and Board Member Ben Hershenson entered a motion to approve the request consistent with the findings of staff; Board Member Russ Winn seconded; the motion carried 5 to 1.

<b>RESULT:</b>	<b>PASSED [5-1]</b>
<b>MOTION BY:</b>	Ben Hershenson, Board Member
<b>SECOND BY:</b>	Russ Winn, Board Member
<b>AYES:</b>	Benson, Hershenson, Rascio, Waterhouse, Winn
<b>NAYS:</b>	Galloway
<b>ABSTAINED:</b>	Gambrell

- Chairman Anthony Rascio recessed the meeting for 10 minutes.

**B. CASE NAME: DISCOVERY DAY ACADEMY SPECIAL EXCEPTION (SPE21-78485-BOS)**

A SPECIAL EXCEPTION REQUEST FOR A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT.

**3. APPLICANT PRESENTATION – CASE B.**

**Presenters:**

Tina Ekblad, Morris-Depew Associates

Cindy Leal, Morris-Depew Associates  
Elizabeth Basart, Discovery Day Academy  
Bill Morris, Morris-Depew Associates

- Ms. Tina Ekblad gave the introduction of the key presentation speakers, Mr. Bill Morris, Ms. Cindy Leal, and Ms. Elizabeth Basart. Ms. Basart provided the background and overview of the academy and its program explaining the need for relocation.
- Ms. Cindy Leal provided a presentation (copy in Clerk's file) reviewing the location, site and proposed uses. The Special Exception request was to permit Discovery Day Academy, a private K-5 school currently located in Estero, to relocate to the former jewelry retail building at 25355 S. Tamiami Trail within the Prado at Spring Creek shopping center. The Applicant proposed to relocate a daycare for infants to preschool age with 40 children maximum.
- Mr. Bill Morris continued the presentation discussing traffic and circulation, and traffic facilities of the proposed area. He explained the different commercial uses within the development. Mr. Morris provided the Traffic Analysis, Traffic Operations Plan, the Queuing Analysis, and Traffic Safety as requested by staff.
- Ms. Leal provided discussion of Special Exception considerations and feedback from two neighborhood meetings held for the project. She presented the points of how the project was consistent with the goals and objectives of the City's Comprehensive Plan.
- Board Member Ben Hershenson questioned the validity of the traffic study conducted in March with COVID impacting traffic and several businesses having left the development. His concern was that the study did not reflect normal traffic patterns. Mr. Morris responded that based on numbers from prior years, the impact to that section of Tamiami Trail would be incremental, very small.
- Chairman Rascio expressed concern about the two-vehicles-per-minute estimate, and the danger of vehicles arriving in two rows. Mr. Morris explained that the plan had been to avoid putting any traffic on Bernwood Drive. Ms. Basart provided the protocol of the current successful pick-up operation.

#### 4. STAFF REPORT.

- Ms. Mary Zizzo, Community Development, presented the report (copy in Clerk's file) providing reasons for the Special Exception and reviewed the site plan.
- Mr. Tom Ross, Community Development, presented traffic concerns noting that the traffic counts showed a significant amount of traffic in the mornings designed to turn left, causing stacking. The analysis showed the vehicle queue could potentially stretch over 400 feet. Also of concern was the arrival time for all students which was the same. Applicant proposed to have all traffic go towards the north, which staff agreed to. Staff was concerned about the use of cones and temporary closure. Managing compliance would be difficult.
- Mr. Ross discussed the application of Condition 9 stating that should the operation not function according to the plan and Applicant is found in violation, the Special Exception

approval would be reconsidered by the City Council. Ms. Zizzo summarized the analysis and listed the staff recommendations.

- Ms. Tina Ekblad and Ms. Elizabeth Basart provided rebuttal to questions and concerns.
- Chairman Anthony Rascio stated that he did not believe the location to be appropriate for an elementary school.
- Board Member Ben Hershenson believed in the mission of the school but must weigh what was the greater good. Health, safety, and welfare override all else. He did not believe he could support the request.
- Board Member Gary Gambrell commended the academy and founder for their mission. He asked if the space had been leased and renovations already started. Ms. Basart responded in the affirmative. Board Member Gambrell disclosed he had been by the site and saw the work occurring.
- Board Member Gerald Benson stated he would like to approve and appreciated the Applicant's dilemma. He believed the current property owner had a responsibility to manage the property while addressing the changes in marketing conditions and make improvements. Board Member Benson agreed with staff's analysis and recommendations. He believed the median recommended was appropriate. If all the recommendations by staff were agreed to, then he would vote in favor.
- Chairman Anthony Rascio recessed the meeting for 5 minutes at the request of the City Attorney to allow Applicant to confer with the consultant.
- Mr. John Dulmer spoke about the agreement between staff and Applicant where safety of the children was at issue and not aesthetics. They would be seeking solutions that provide that level of safety at a lower cost than the recommended wall between today's meeting and the City Council meeting. The time would be used to work through the traffic flow and evaluating alternative locations for the sidewalk.
- Item B - Chairman Anthony Rascio called for a motion to recommend approval of the Applicant's Special Exception with the stipulation that the three outstanding conditions be resolved, and Board Member Gary Gambrell entered a motion for a roll call; Chairman Anthony Rascio seconded.
- Board Member Bruce Galloway believed this request to be the first of many to come with shopping centers and malls closing, trying to find new uses for the space. He believed the site was not appropriate for an elementary school, but if the three outstanding conditions were resolved, he would vote in favor.
- Board Member Gary Gambrell reiterated that only being given a few days to consider the complex case was an inadequate amount of time. He abstained. City Attorney, Derek Rooney, instructed Board Member Gambrell that he could only abstain if there was a direct conflict to which he stated that he was in conflict with the law. Mr. Rooney informed that abstaining would be treated as a vote of denial. Board Member Gambrell stated he would not vote.

- Board Member Russ Winn voted in favor and believed that staff had given Applicant an opening to assist in taking care of some arrangements. He approved with the noted stipulation of resolution of the outstanding conditions.
- Chairman Anthony Rascio stated he was not in favor of approval reiterating his belief that the location was not appropriate for an elementary school.
- Board Member Ben Hershenson needed to see the actual results so at that point, he could not vote in favor.
- Board Member Gerald Benson felt if staff and Applicant could work out the outstanding conditions to the satisfaction of City Council, he voted in favor. He believed a median or traffic cop was required for the site.
- Board Member Lynda Waterhouse voted in favor with the stipulations being met.

<b>RESULT:</b>	<b>PASSED [4-3]</b>
<b>MOTION BY:</b>	Gary Gambrell, Board Member
<b>SECOND BY:</b>	Anthony Rascio, Chairman
<b>AYES:</b>	Benson, Galloway, Waterhouse, Winn
<b>NAYS:</b>	Gambrell, Hershenson, Rascio

**X. ADJOURNMENT.**

There being no further items to discuss, Chairman Rascio adjourned the meeting at 12:30 P.M.

Respectfully submitted,

\_\_\_\_\_  
Laurie K. Hamm, Recording Secretary

APPROVED:

BONITA SPRINGS ZONING BOARD:

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

AUTHENTICATED:

\_\_\_\_\_  
Anthony Rascio, Chairman

**BONITA SPRINGS, FLORIDA  
COMMUNITY DEVELOPMENT DEPARTMENT  
ZONING DIVISION  
STAFF REPORT**

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**PROJECT NAME: GRACE CLASSICAL ACADEMY**

**TYPE OF CASE: SPECIAL EXCEPTION**

**CASE NUMBER: SPE20-76117-BOS**

**HEARING DATE: JUNE 29, 2021**

**PLANNER: MARY ZIZZO, ESQ.**

**REQUEST AND STAFF RECOMMENDATION**

A special exception request at 3971 Via Del Rey, for a two-phased expansion of enrollment of an existing Schools, Noncommercial, Other use (Grace Classical Academy) within the Agricultural (AG-2) zoning district.

Deviations Requested: None

Staff recommends **APPROVAL** of the request in conjunction with the conditions outlined later in this Staff Report.

**I. APPLICATION SUMMARY:**

- A. Applicant: Grace Classical Academy, Inc.
- B. Agent: D. Wayne Arnold, AICP of Q. Grady Minor & Associates, P.A.
- C. Request: A special exception request at 3971 Via Del Rey, for a two-phased expansion of enrollment of an existing Schools, Noncommercial, Other use (Grace Classical Academy) within the Agricultural (AG-2) zoning district.
- D. Location: 3971 Via Del Rey, Bonita Springs, FL 34134
- E. Future Land Use Designation, Current Zoning and Use of Property:
  - Future Land Use: Medium Density Multi-Family Residential
  - Current Zoning: Agricultural (AG-2)

Current Use: Place of Worship, Daycare, and Noncommercial School Use- Grace Classical Academy, pursuant to Zoning Resolution 14-05, as expanded, pursuant to TMP20-76106-BOS, as recorded in the Official Records of Lee County Florida, Instrument # 2021000061308.

F. Surrounding Land Use:

<u>Existing Zoning &amp; Land Use</u>	<u>Future Land Use Map</u>
North: Commercial Planned Development (CPD); Vanderbilt Office Park CPD	General Commercial
East: RS-3, RS-1, AG-2, Single-Family Homes	Moderate Density Residential
South: Residential Planned Development (RPD); Vacant (Future Assisted Living Facility).	Medium Density Multi-Family Residential
West: C-1 Zoned, Collier County.	Collier County

**II. BACKGROUND AND INFORMATIONAL ANALYSIS**

Introduction/Synopsis

The special exception request is to allow an expansion of the K-8 private school, Grace Classical Academy, located at 3971 Via Del Rey. The site was previously approved under Zoning Resolution 14-05 for 48 students, any expansion requires a modification. The Land Development Code (LDC) allows Lee County noncommercial schools by right in the AG-2 district, and all others by special exception only. The Applicant was granted a temporary use in accordance with LDC 4-253 for 64 students total, which expires on August 27, 2021. This request includes a two-phased expansion.

1. The first phase request is to enroll 90 students within the existing Family Life Center building.
2. The second phase request is to enroll 160 students, within the existing Family Life Center building and the construction of portable or modular classrooms in the rear of the property (*see* Attachment A).

The subject property is owned by First Baptist Church of Bonita Springs, which currently has a Sanctuary building and a two-story multi-purpose building (the Family Life Center building). Currently, the Sanctuary building is occupied by a preschool during the week and Grace Classical Academy, Inc., the Applicant, leases the Family Life Center Building for their private noncommercial K-8 school use. The Applicant filed a request to expand their occupancy within the Family Life Center to 160 students in two phases. The Applicant has met with Community Development and Bonita Springs Fire Control and Rescue District and verified the building meets the applicable building and fire codes for the school use.

Much of the public feedback received was in reference to the use of Mango Drive. The Applicant has agreed to a plan to block the use of this access point for the pick-up and drop-off operations of the school via cones within the property (Attachment B).

#### Special Exception Review Criteria – LDC 4-131(c)(2)

*Considerations. In reaching their decision, the zoning board must consider the following, whenever applicable:*

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.*
- b. The testimony of any applicant.*
- c. The recommendation of staff.*
- d. The testimony of the public.*
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Bonita Plan.*
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*
- h. Whether the request will be compatible with existing or planned uses.*
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.*
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.*

Reviewing these criteria, Staff makes the following findings:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.*

The Applicant states there is an increase in demand for faith-based private educational opportunities. Due to COVID-19, schools have created hybrid models or focused on smaller class sizes. Their website indicates that this school offers both.

*d. The testimony of the public.*

At the point of writing this Staff Report, the only public responses we received were regarding the use of Mango Drive. The site has been operating as a school and daycare during the work-week since 2014 and within those responses received, no complaint of the private school use was provided. The nearby property owners did present issues with the School's use of Mango Drive, a public road. The School has addressed this concern and the use of Mango Drive will be prevented for the pick-up and drop-off operations of the school by means of cones inserted within the site during pickup and drop-off times (Attachment B).

*e. Whether the request is consistent with the goals, objectives, policies and intent of the Bonita Plan.*

The property is located within the Medium Density Multi-Family Residential future land use of the Bonita Plan. Appropriate uses include public schools and other public, semi-public and recreational uses on a limited basis. Commercial uses primarily intended to serve the residents and that are sensitive to nearby residential uses may be appropriate.

This is an existing school that has operated since 2014. The use of Mango Drive for the school use is prevented within the proposed plan, providing additional sensitivity to those nearby residential uses. The site is just south of a commercial office park and surrounded by residential properties of both the City of Bonita Springs and Collier County. The assisted living facility, Coastal Cottages was approved for Zoning on the parcel to the south.

*f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Staff thoroughly reviewed the stacking plans (Attachment C) for the pick-ups and drop-offs for the school use in relation to health, safety, welfare, and site functionality. As a result, the stacking plans changed throughout the review process to ensure the site can adequately accommodate all vehicles for queuing on site for both proposed phases. Staff is comfortable supporting this use as outlined at the end of this Staff Report, ensuring that drive aisles are paved as part of the expansion and that the site continues to function appropriately as the volume of students and vehicles increases, supporting the existing site and the nearby residences (Attachment C, Page 2).

Further, the LDC requires that a local development order be required for all site related improvements. All proposed site and building improvements will be reviewed by the City Architect. At that time, a landscape plan meeting or exceeding the landscaping requirements provided in Chapter 3 of the LDC will be required. Any existing landscaping deficiencies (required vegetation that is currently absent from the site or that has been removed and/or irreparably damaged) must be replaced/restored consistent and compliant with the property's previously approved site permits. Any existing deficiencies must be rectified/resolved prior to, or in conjunction with, the issuance of any additional site permits/approvals. Further, building perimeter plantings, consistent with the requirements

of LDC 3-418, for the modular/portable classroom facilities and/or any permanent classroom buildings shall be installed at the time of construction of said facilities. The expansion/addition of any facilities (religious or scholastic) on site will require that all project buffers be brought into conformity with current LDC requirements (if not already conforming), prior to or at time of permitting/construction.

*g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*

There are no environmentally critical areas or natural resources at this site.

*h. Whether the request will be compatible with existing or planned uses.*

The use abuts an established residential area to the east, commercial uses to the north, and a planned assisted living facility to the south. The Staff opinion is that the proposed expansion does not conflict with these uses. As previously mentioned, Staff has not received concerns regarding the existing use or the proposed expansion. The School will not utilize Mango Drive for pick-ups and drop-offs, as conditioned and as provided for in the Student Drop-off and Pick-up Exhibit (*see* Attachments B and C), and therefore will not contribute to additional traffic to those nearby residents.

*i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.*

As previously discussed, this expansion shall not cause damage or other detriment to persons or property. The site has been functioning as a private school and Pre-K concurrently since 2014. Those utilizing the school will be instructed to utilize Vanderbilt Drive for ingress and egress to the site, which has a right and left turn lane into the site. The Applicant indicates in their Traffic Impact Statement (TIS) and stacking plan that the site can accommodate all traffic within, and no impacts to the surrounding roadways will result. Further, if new buildings are constructed, they will be appropriately buffered, located in accordance with the LDC and would be required to meet the design standards contained in Chapter 3 of the LDC, providing an aesthetically pleasing view for the adjacent residents.

*j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.*

The Applicant has applied for a special exception, as required by LDC Sec. 4-436. A narrative, site plan, TIS and stacking plan were provided to support the request. The Applicant held the required neighborhood meetings prior to submitting the request, and again after the application was found sufficient by Staff. The request has been reviewed for compliance with the standards set forth in LDC Chapter Four and no deviations have been requested.

As such, it is Staff's opinion that the Applicant has been able to demonstrate compliance with the special exception criteria.

### Surrounding Zoning

The parcel to the north is zoned CPD and is a business office park.

To the south is currently vacant land, zoned RPD for an assisted living facility, per Zoning Ordinance 19-03.

To the east is Mango Drive, a public right-of-way, followed by single-family residential homes zoned RS-1, RS-3 and AG-2.

To the west is Vanderbilt Drive, the Lee/Collier County line, office buildings and single-family residences of Collier County.

### Neighborhood Compatibility

The Family Life Center building and site have already been developed and are being used for the private school use. The Sanctuary building operates as a Place of Worship.

To the north is an existing office park, comprised of individually owned parcels and businesses, and zoned Commercial Planned Development. To the east are single-family residential uses and to the south is currently vacant land, approved for a 92-bed assisted living facility.

Staff agrees that the proposed expansion, as conditioned, would not negatively impact the surrounding area.

### Environmental Considerations

The subject property has already been developed and impacted. There are no environmentally critical areas or natural resources located on site. Any future development will be in accordance with LDC standards.

### Traffic

The Church operates on Sunday providing day classes to its membership but does not offer weekday classes. The school provides classes during the weekday and may offer occasional weekend events.

Based on current conditions, the school can accommodate stacking for 90 students, proposed Phase 1, within the paved areas of the driveways. As conditioned and included in Phase 2 of the stacking plan, when enrollment exceeds 90 students, the site would be required to pave the southern drive aisle to accommodate all queuing for afternoon pick-ups entirely on site (Attachment C)

Staff agrees that the use of Vanderbilt Drive as the point of ingress and egress for the use will not cause an adverse impact on traffic and provides an adequate connection to a collector road.

## Comprehensive Plan Considerations

The subject property is located within the Medium Density Multi-Family Residential future land use category according to the Future Land Use Map of the City's Comprehensive Plan. The Medium Density Multi-Family Residential category is described in **Policy 1.1.8.1** as:

***Policy 1.1.8.1: Medium Density Multi-Family Residential** – Intended to accommodate multi-family, modular and manufactured housing, and existing mobile home and recreational vehicle parks up to a maximum density of 10 units per gross acre and approximately 1,341 acres of gross land area in the land use category; group homes and foster care facilities, public schools and other public, semi-public and recreational uses on a limited basis. This land use category is applied primarily to existing properties developed with multi-family or mobile home/recreational vehicle parks located within the Coastal Management Area (CMA), or lands formerly afforded a land use designation of Urban Community in the Lee Plan, or properties adjacent to existing or major planned roadways.*

- a. Appropriate residential housing types include conventional and modular constructed single-family and duplex structures, on permanent foundations, cluster housing, zero lot line, townhouses, multi-family structures, and mobile homes or recreational vehicles in existing mobile home or recreational vehicle parks.*
- b. Residential density shall be limited to not more than six dwelling units per acre. If affordable housing is provided, residential density may be increased by up to four additional dwelling units per acre. This density range is consistent with the density previously afforded under the Urban Community land use designation in the Lee Plan.*
- c. Commercial uses may be appropriate provided they are primarily intended to serve the residents of a mixed use project and are sensitive to nearby residential uses.*
- d. Maximum allowable height of structures shall be 75 feet from the base flood elevation to the eaves, except that no new structures or modification of existing structures located on the islands west of the mainland may be constructed in excess of 35 feet in height.*

The requested use of a Noncommercial School, Other use is consistent and compatible with the Medium Density Multi-Family Residential future land use provisions in the City's Comprehensive Plan.

## Findings & Conclusion

It is Staff's opinion the special exception request for the expansion of a noncommercial school, other use is consistent with the provisions of the Comprehensive Plan, is compatible with existing and planned uses within the area, will not cause damage, hazard or nuisance, will not impact

environmentally critical areas, and is located in an area with adequate public facilities. Based on the documentation provided, the school is not exposed to physical constraints, hazards or nuisances which are detrimental to the health and safety of students, the general operation of the school, and the general public.

### **III. RECOMMENDATION:**

Staff recommends **APPROVAL** of the request, subject to the following conditions:

1. This approval is for a two-phase expansion of enrollment.
  - a. Phase 1: 90 students maximum. The site shall function in accordance with the Phase 1 stacking plan attached to the Special Exception resolution (Attachment C, Page 1).
  - b. Phase 2: 91-160 students maximum. The site shall function in accordance with the Phase 2 stacking plan, which includes additional site improvements as depicted thereon (Attachment C, Page 2). This plan may be reassessed at the time of the local development order for compliance and functionality based upon the performance and data provided from the existing usage and/or the construction of the proposed entrance from Vanderbilt Drive to serve the adjacent parcel, to the south.
2. At all times, 159 parking spaces shall be maintained. If utilizing a shared parking agreement, a Joint Use of Parking Administrative Action is required, and the approval shall be recorded in the Official Records of Lee County.
3. All on-site vehicular circulation shall only utilize paved drive aisles and shall enter and exit the site via Via Del Rey and Vanderbilt Drive.
4. At no time shall vehicle queues extend onto roadways, including Via Del Ray and Vanderbilt Drive, or block any access driveway to the site.
5. At the time of school enrollment of 91 students, the Phase 2 stacking plan attached to the Special Exception resolution will be implemented (Attachment C, Page 2). The school may administratively request an alternate stacking plan or threshold above 90 students to determine if the Phase 1 stacking plan can accommodate more than the 90 students, and if so, establish a new student enrollment limit prior to implementing the Phase 2 stacking plan.
6. As contemplated within the Traffic Impact Statement (TIS), all ingress and egress for the school function shall utilize Vanderbilt Drive.

7. An on-site directional sign shall be installed to facilitate the student pick-up and drop off in accordance with the approved Student Drop-Off and Pick-Up Exhibit (Attachment B).
8. During afternoon student dismissal period (i.e., 2:45 PM- 3:15 PM), school personnel shall place traffic cones and/or flaggers across the east/west drive aisle to Mango Drive to provide direction in accordance with the approved Student Drop-Off and Pick-Up Exhibit (Attachment B).
9. The school shall provide proof of enrollment on an annual basis by the anniversary of the date of approval to the City of Bonita Springs Community Development Department to ensure compliance. This report shall include the number of students enrolled. Failure to submit this report shall result in a revocation of occupancy.
10. Private school hours of operation are limited to Monday through Friday, 8 AM- 5 PM, with occasional weekend events.
11. Should the operation not function according to the stacking plan (Attachment C), or additional safety concerns arise from the implementation of the plan, after three documented observations, then this special exception shall return to City Council for reconsideration.
12. Collier County Staff will review the future local development order Traffic Impact Statement (TIS) and site plans and provide review comments. The TIS must include full operational analysis based on built out conditions, including the following:
  - a. turn lane warrants based on Collier County ROW Standards,
  - b. documentation of existing conditions, and
  - c. conclusion pertaining to existing constraints and/or proposed improvements.

### **SUBJECT PROPERTY**

The Applicant indicates the STRAP number is: 04-48-25-B1-00002.0000

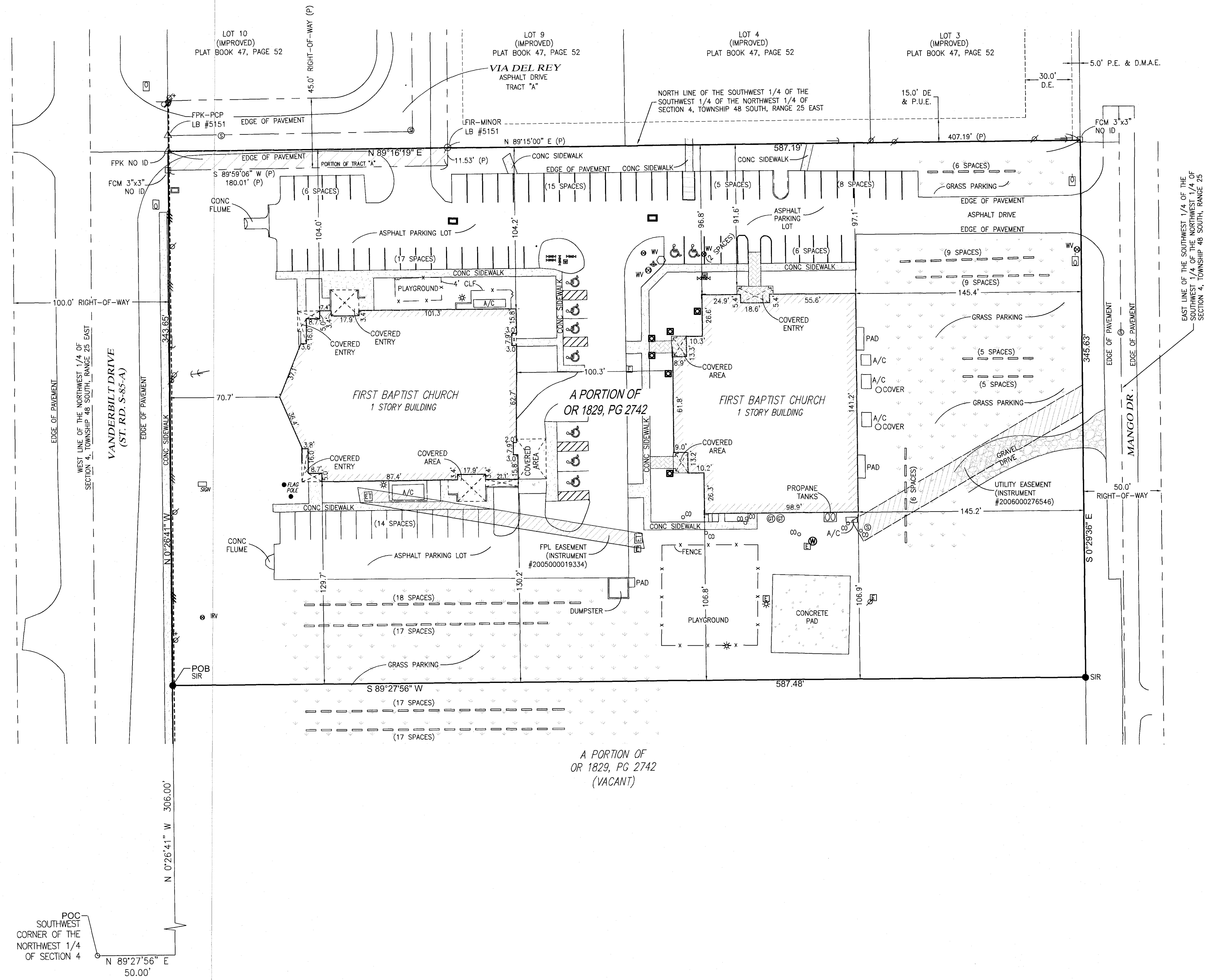
### **EXHIBITS**

- A. Sketch and Legal Description of the Subject Property

### **ATTACHMENTS**

- A. Proposed Site Plan
- B. Proposed Student Drop-Off and Pick-Up Exhibit
- C. Proposed Stacking Plan

# EXHIBIT A



## PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

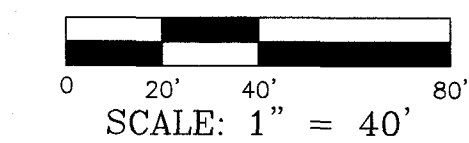
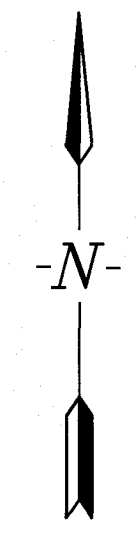
COMMENCING AT SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 4; THENCE ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4 NORTH 89°27'56" EAST, A DISTANCE OF 50.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF VANDERBILT DRIVE (S.R. S-85-A); THENCE ALONG SAID EAST RIGHT-OF-WAY NORTH 00°26'41" WEST, A DISTANCE OF 306.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED;

THENCE CONTINUE ALONG SAID RIGHT-OF-WAY NORTH 00°26'41" WEST, A DISTANCE OF 343.65 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 4; THENCE ALONG SAID NORTH LINE NORTH 89°16'19" EAST, A DISTANCE OF 587.19 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF MANGO DRIVE AND ALSO BEING THE NORTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1966, PAGE 3561, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF SAID LANDS AND ALSO BEING SAID WEST RIGHT-OF-WAY SOUTH 00°29'36" EAST, A DISTANCE OF 345.63 FEET; THENCE SOUTH 89°27'56" WEST, A DISTANCE OF 587.48 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.65 ACRES, MORE OR LESS.

## NOTES:

- BEARINGS SHOWN HEREON REFER TO THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED USING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND ARE BASED ON THE SOUTH LINE OF VANDERBILT OFFICE PARK, AS RECORDED IN PLAT BOOK 47, PAGE 52, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING N 89°16'19" E.
- THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF ABSTRACT OF TITLE AND MAY BE SUBJECT TO EASEMENTS, RESERVATIONS AND/OR RESTRICTIONS OF RECORD. ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.
- THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X, HAVING NO BASE FLOOD ELEVATION, PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 12071C 0654F, DATED 8-28-2008.
- CERTAIN FEATURES REPRESENTED BY SYMBOLS MAY NOT BE SHOWN AT THEIR TRUE LOCATION AND/OR SCALE IN ORDER TO BE ABLE TO DEPICT THEM ON THIS MAP.
- DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.
- THIS SURVEY DOES NOT ADDRESS ANY ENVIRONMENTAL CONCERNS, ENDANGERED WILDLIFE OR JURISDICTIONAL WETLANDS, IF ANY, EXCEPT AS SHOWN ON THIS SURVEY.
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SURVEY MAP ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.
- UNLESS OTHERWISE NOTED, BELOW GROUND UTILITIES AND FOUNDATIONS WERE NOT LOCATED FOR THE PURPOSES OF THIS SURVEY.
- BY SIGNING BELOW I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.051, F.A.C., PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.
- DATE OF LAST FIELD WORK: 12/11/2019.



THIS PLAN MAY HAVE BEEN ENLARGED OR REDUCED FROM INTENDED DISPLAY SCALE FOR REPRODUCTION REASONS

## LEGEND

POC	POINT OF COMMENCEMENT	PG	PLAT BOOK	ELV	ELEVATION	CB	CATCH BASIN	TL	TRAFFIC LIGHT
OR	OFFICIAL RECORDS BOOK	PG	PROFESSIONAL SURVEYOR AND MAPPER	INV	INVERT ELEVATION	CD	CONCRETE DRIVE	TR	TRANSFORMER
POB	POINT OF BEGINNING	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CM	CORRUGATED METAL PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT
PR	PROFESSIONAL RECORD	PG	PROFESSIONAL SURVEYOR AND MAPPER	RM	RIGHT-OF-WAY	CP	CORRUGATED PLASTIC PIPE	TR	TRAFFIC LIGHT

CERTIFIED TO:  
**FIRST BAPTIST CHURCH OF BONITA SPRINGS, AKA NEW LIFE CHURCH**  
**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
**BRENNAN, MANNA & DIAMOND, P.L.**



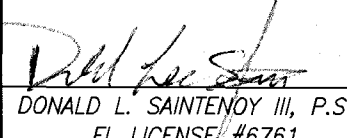
**GradyMinor**

Civil Engineers • Land Surveyors • Planners • Landscape Architects

Cert. of Auth. EB 0005151      Cert. of Auth. LB 0005151

Bonita Springs: 239.947.1144      www.GradyMinor.com      Fort Myers: 239.690.4380

Q. Grady Minor and Associates, P.A.  
 3800 Via Del Rey  
 Bonita Springs, Florida 34134

DRAWN BY:	AH	<b>BOUNDARY SURVEY w/ IMPROVEMENTS</b>	
CHECKED BY:	DLS	<b>FIRST BAPTIST CHURCH OF BONITA</b>	12/19/19 DATE SIGNED
JOB CODE:	3971VDR	<b>3971 VIA DEL REY</b>	
SCALE:	1" = 40'	<b>BONITA SPRINGS, FL 34134</b>	DONALD L. SANTENOY III, P.S.M. FL LICENSE #6761 FOR THE FIRM
DATE:	12 DECEMBER 2019	<b>LYING IN</b>	
FILE:	19-221-BSI.DWG	<b>SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST</b>	
SHEET:	1 of 1	<b>LEE COUNTY, FLORIDA</b>	

G:\SURVEY\PROJECT SURVEY 2019\19-221 - FIRST BAPTIST CHURCH BONITA SPRINGS\SURVEY\19-221-BSI.DWG

# ATTACHMENT A



0 30' 60'  
11x17 SCALE: 1" = 60'

ZONED: VANDERBILT OFFICE PARK CPD  
USE: OFFICES

ZONED: VANDERBILT OFFICE PARK CPD  
USE: OFFICES

10' WIDE TYPE 'A' LANDSCAPE  
BUFFER (EXISTING)

PORTION OF  
TRACT "A"  
PLAT BOOK  
47 PAGE 52

VIA DEL REY

VIA DEL REY

GRASS PARKING

PARKING

PARKING

GRASS PARKING

ZONED: C-1  
USE UNDEVELOPED

VANDERBILT DRIVE

15' WIDE TYPE 'D' LANDSCAPE BUFFER (EXISTING)

CHURCH SANCTUARY  
PRE-SCHOOL

SCHOOL /  
COMMUNITY ROOM

FUTURE  
PORTABLE/  
MODULAR  
CLASSROOMS

ZONED: RS-3  
USE: SINGLE FAMILY  
RESIDENTIAL

15' WIDE TYPE 'D'  
LANDSCAPE BUFFER  
(SEE CONDITION #2)

PARKING

FPL EASEMENT  
(INSTRUMENT #2005000019334)

DROP OFF / PICKUP

UTILITY  
EASEMENT  
(INSTRUMENT  
#2006000276546)

PARKING: PROVIDED 141 (82 PAVED + 59 GRASS)  
EXISTING: REQUIRED 37 SPACES  
DAYCARE - 13 EMPLOYEES (2 PER  
EMPLOYEE = 26 SPACES)  
K-8 - 10 EMPLOYEES (1 PER EMPLOYEE = 10  
SPACES)  
48 STUDENTS (1 PER 40 STUDENTS = 1  
SPACE)

GRASS PARKING

PLAY  
GROUND

OUTDOOR PLAY AREA

PROPOSED: REQUIRED 48 SPACES  
DAYCARE - 13 EMPLOYEES (2 PER  
EMPLOYEE = 26 SPACES)  
K-8 - 18 EMPLOYEES (1 PER EMPLOYEE = 18  
SPACES)  
160 STUDENTS (1 PER 40 STUDENTS = 4  
SPACES)

10' WIDE TYPE 'A' LANDSCAPE  
BUFFER (SEE CONDITION #2)

ACCESS, DRAINAGE AND COST  
SHARING EASEMENT  
(INSTRUMENT # 2020000035285)

ZONED: COASTAL COTTAGES RPD  
USE: UNDEVELOPED ASSISTED LIVING

SHARED: 28 SPACES (NORTHERN OFFICES)

LEGEND

Revision	Date	Description	By

DESIGNED BY:	OGMA
DRAWN BY:	SU
APPROVED:	DWA
JOB CODE:	GCASE-20
SCALE:	1" = 60'

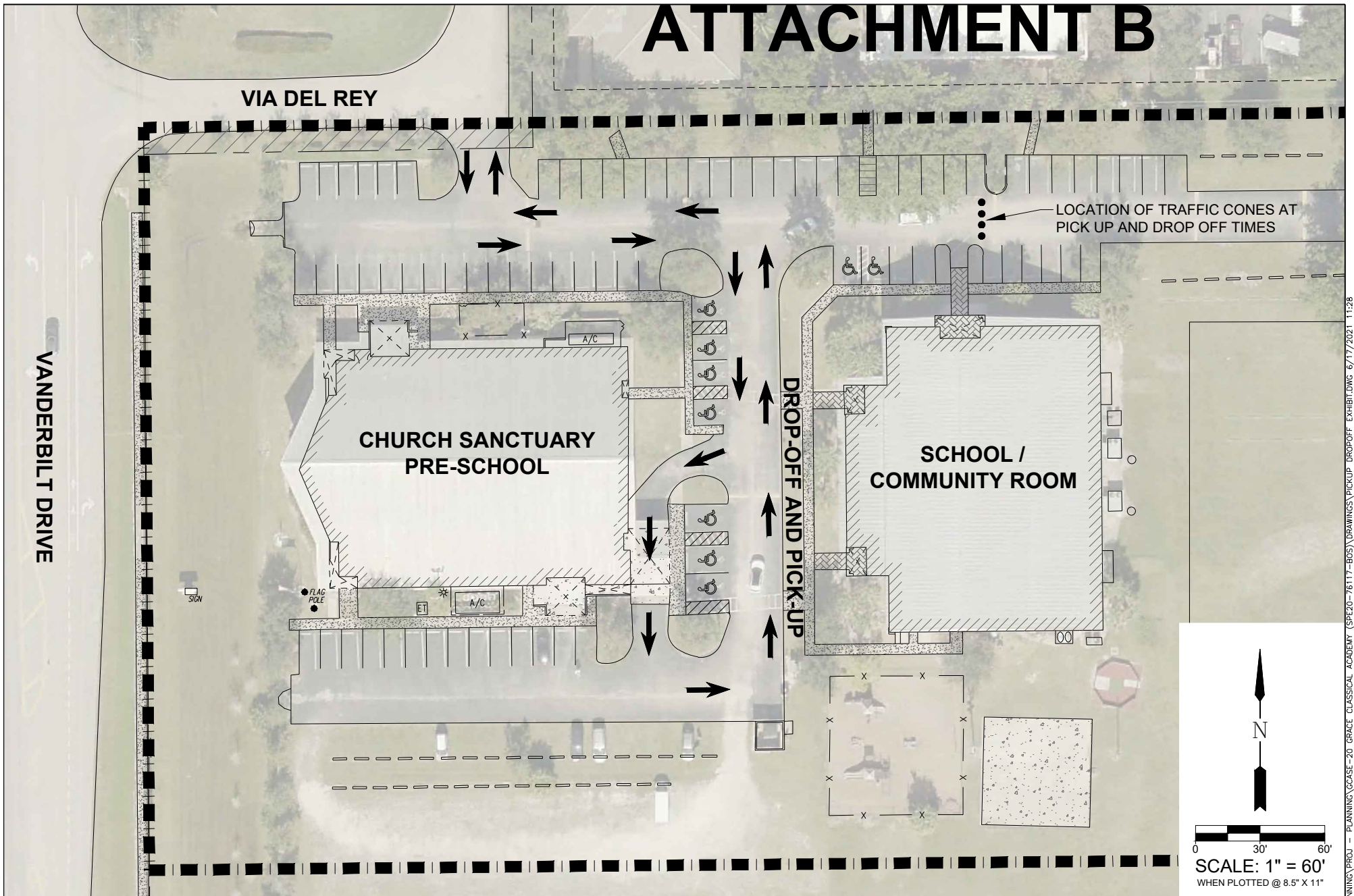
**GradyMinor**  
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 Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266  
 Bonita Springs: 239.947.1282/275 www.GradyMinor.com Fort Myers: 239.690.4380

**GRACE CLASSICAL ACADEMY**  
 SPECIAL EXCEPTION  
 EXHIBIT IV.G  
 CONCEPTUAL SITE PLAN

MUNICIPALITY: BONITA SPRINGS  
 SBC/TWN/RGE: 04/48S/25E  
 DATE: MARCH 2021  
 SUBMITTAL TYPE: SPECIAL EXCEPTION  
 SHEET 1 OF 1

LOCAL FILES \PLANNING\PROJ - PLANNING\GCASE-20 GRACE CLASSICAL ACADEMY (SPEZ0-7611-805) DRAWINGS\EXHIBIT IV.G SITE PLAN-RP 3/20/2021 10:35 AM

# ATTACHMENT B



**LEGEND**



**GradyMinor**

O. Grady Minor and Associates, P.A.  
3800 Via Del Rey  
Bonita Springs, Florida 34134

Civil Engineers • Land Surveyors • Planners • Landscape Architects  
 Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266  
 Bonita Springs: 239.947.1144 www.GradyMinor.com Fort Myers: 239.690.4380

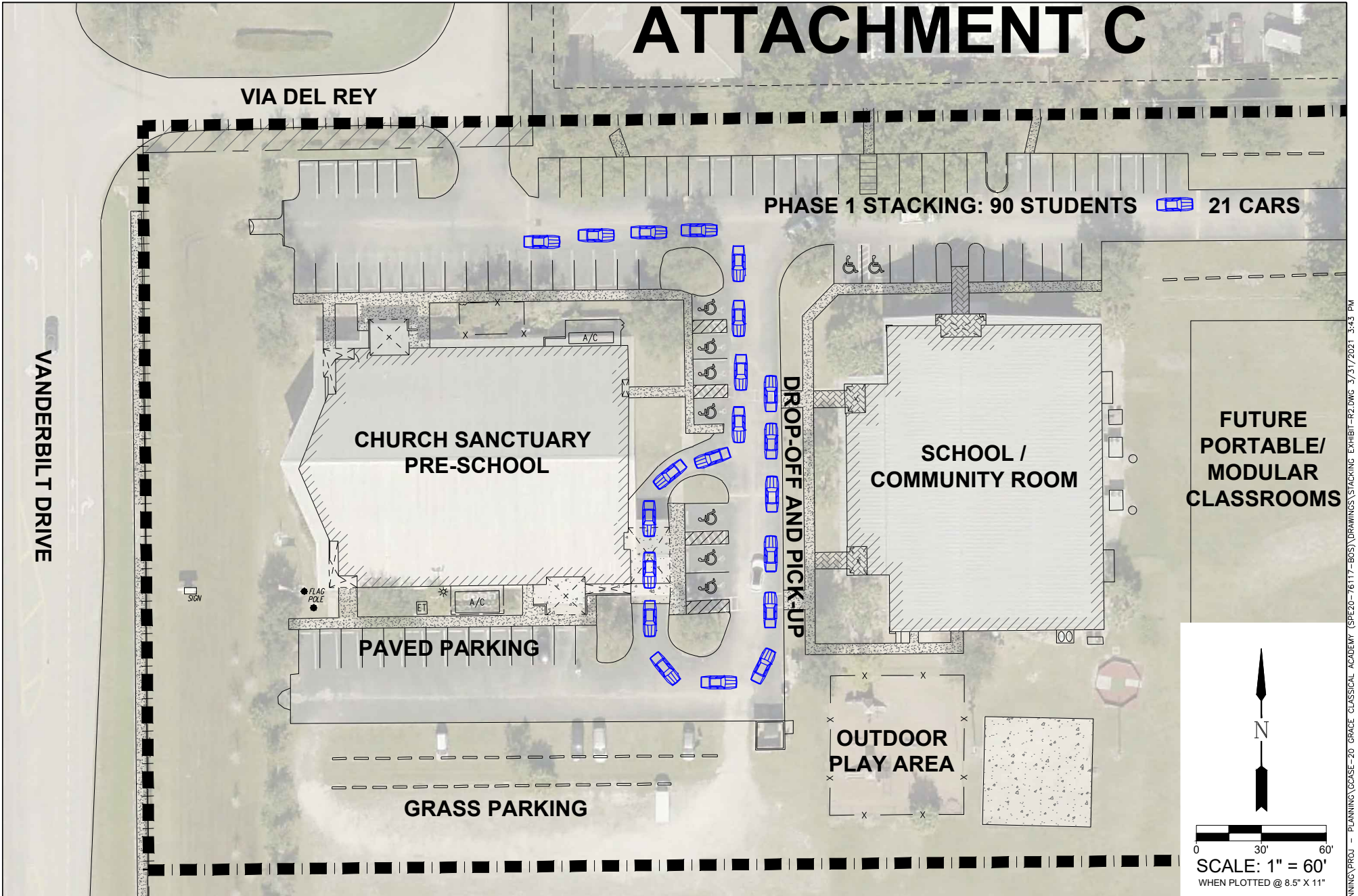
*GRACE CLASSICAL ACADEMY*

SPECIAL EXCEPTION  
 STUDENT DROP-OFF/PICK-UP EXHIBIT

SCALE:	1" = 60'
JOB CODE:	GCASE-20
DATE:	JUNE 2021
FILE NAME:	PICKUP DROP OFF EXHIBIT
SHEET	1 OF 1

I:\GOM\LOCAL FILES\PLANNING\PROJ - PLANNING\GCASE-20 GRACE CLASSICAL ACADEMY (SPE20-76117-BOS)\DRAWINGS\PICKUP DROP OFF EXHIBIT.DWG 6/17/2021 11:28 AM

# ATTACHMENT C



**LEGEND**



**GradyMinor**

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3800 Via Del Rey  
Bonita Springs, Florida 34134

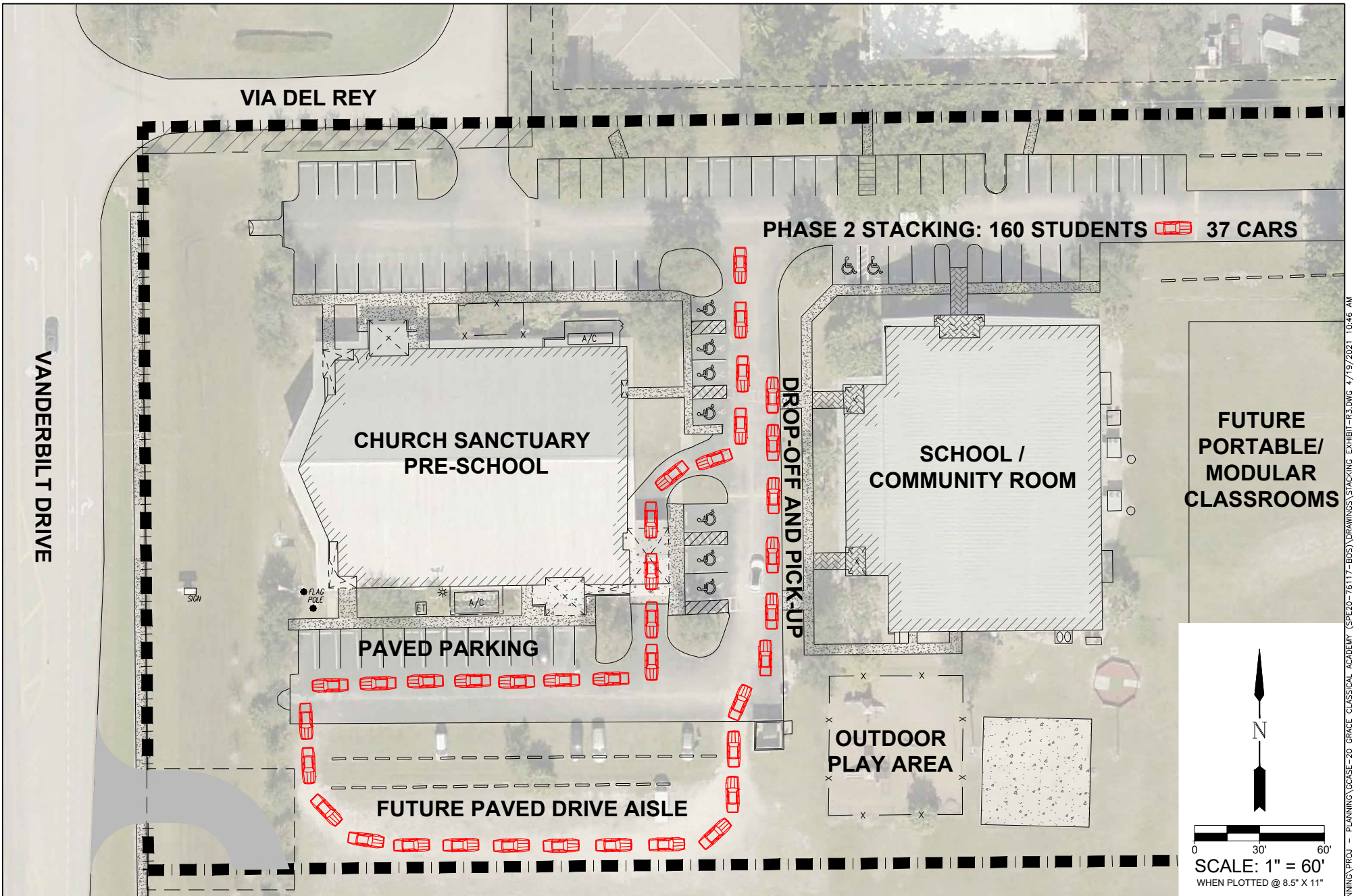
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**GRACE CLASSICAL ACADEMY**

SPECIAL EXCEPTION

STUDENT DROP-OFF/PICK-UP STACKING EXHIBIT  
PHASE 1

SCALE:	1" = 60'
JOB CODE:	GCASE-20
DATE:	FEBRUARY 2021
FILE NAME:	STACKING EXHIBIT-R2
SHEET	1 OF 1



LEGEND



**GradyMinor**

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 31/275

GRACE CLASSICAL ACADEMY

SPECIAL EXCEPTION

STUDENT DROP-OFF/PICK-UP STACKING EXHIBIT  
PHASE 2

SCALE:  
1" = 60'  
JOB CODE:  
GCASE-20  
DATE:  
APRIL 2021  
FILE NAME:  
STACKING EXHIBIT-R3  
SHEET 1 OF 1

\\GOM.LOCAL\FILES\PLANNING\PROJ - PLANNING\GCASE-20 GRACE CLASSICAL ACADEMY (SPE20-76117-BOS)\DRAWINGS\STACKING EXHIBIT-R3.DWG 4/19/2021 10:46 AM

**REQUESTED MOTION:** A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION WITHIN THE U.S. 41 OVERLAY TO ALLOW A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) ON APPROXIMATELY 1.5 +/- ACRES WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT, LOCATED AT 25355 S. TAMIAMI TRL, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE.

**REQUESTOR:** Mary Zizzo, Planner II, Community Development

**AGENDA:** Zoning and Land Use items public hearing

**STRATEGIC PRIORITY:** No

---

**BACKGROUND:**

The requested special exception (SPE21-78485-BOS) is to allow a Noncommercial School, Other use (Discovery Day Academy) in the southwestern building at 25355 S. Tamiami Trail. The request is for 72 students K-5 to coexist with a daycare. The Community Commercial (CC) zoning district requires a special exception for the noncommercial school use.

The case was heard by the Zoning Board on June 29, 2021 with a recommendation to approve the request (4-2-1). The Zoning Board members that recommended denial explained their reasons for their denial, which are included in the draft minutes from the meeting, provided in your packet. The Zoning Board recommendation also included direction for Staff to work with the Applicant on Conditions 4 (roadway improvements), 5 (playground screening) and 11 (pedestrian interconnectivity). Staff has also amended the language in Condition 6 to make the access points clear. The Applicant and Staff agree with these changes and the DRAFT zoning resolution is included herein.

The Applicant also provided additional information for Staff's review pertaining to the special exception findings criteria in Sec. 4-131(c). This additional information enhanced the analysis for Staff to provide a recommendation of approval, as conditioned.

To conserve paper and resources, the full application backup will be viewable online only with the full agenda packet. Please contact the Clerk's Office for paper copy requests.

**STAFF RECOMMENDATION:** Approve the request as conditioned.

**ATTACHMENTS:**

1. Draft Resolution
2. Zoning Board Meeting Minutes from 6-29-2021
3. Staff Report

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: John Dulmer

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

CITY OF BONITA SPRINGS  
ZONING RESOLUTION NO. 21 – XX

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION WITHIN THE U.S. 41 OVERLAY TO ALLOW A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) ON APPROXIMATELY 1.5 +/- ACRES WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT, LOCATED AT 25355 S. TAMIAMI TRL, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Bonita Springs City Council adopted Zoning Ordinance No. 15-27, establishing the U.S. 41 Overlay District to guide future growth and redevelopment along U.S. 41 in a manner that maintains the aesthetic quality of the corridor, makes efficient use of public infrastructure, and balances automobile-oriented patterns with pedestrian development with the intent to limit strip commercial development; and

**WHEREAS**, the Community Commercial District (CC) requires that certain uses are required to obtain a special exception pursuant to Section 4-661 of the land development code (“LDC”); and

**WHEREAS**, a Public Hearing was advertised and heard on June 29, 2021 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals (“Zoning Board”) on Case SPE21-78485-BOS who recommended approval (4-2-1) after giving full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all parties; and

**WHEREAS**, City Council at their July 21, 2021 zoning meeting considered the record of the Zoning Board on Case SPE21-78485-BOS, as well as a transcript of the Zoning Board hearing submitted as part of the City Council hearing record, and gave full consideration of the Staff Recommendation, the evidence and testimony, including the expert opinion of the Applicant’s agents.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Bonita Springs, Lee County, Florida:

**SECTION ONE: APPROVAL OF REQUEST**

City Council of Bonita Springs hereby approves the request for a special exception with the following conditions:

Conditions:

1. This approval is for a special exception to allow the operation of a noncommercial school, other use located at 25355 S. Tamiami Trail. This building is located at the southwestern corner of the Prado at Spring Creek Shopping Center. This use is limited to the requested user, Discovery Day Academy, only, and shall only allow for 72 students K-5, when in conjunction with the daycare use.
2. Any expansion beyond 40 daycare students or 72 elementary students will require additional approvals.
3. The regular hours of operation are limited to Monday-Friday only from 7:00 AM-6:00 PM.
4. The intersection of Bernwood Parkway and Chamber of Commerce Drive shall be modified with a raised traffic separator at the intersection of Bernwood Parkway and Chamber of Commerce Drive, permitting only westbound ingress and westbound egress (right in, right out), consistent with the Condition Exhibit attached.
5. The proposed play area shall be enclosed with a 6' vinyl fence screened consistent with the Condition Exhibit attached.
6. In accordance with the Traffic Circulation Plan (Plan) provided by the Applicant, all school traffic shall enter and exit from the midpoint plaza access or Timberwilde Drive only. The Applicant shall provide copies of the Plan to all parents or those designated to pick up or drop off the students. The Applicant shall provide sufficient staff to enforce and ensure the functionality of the Plan.
7. All traffic shall be managed entirely within the immediate parking lot of the school use. At no time shall vehicle queues extend onto public roadways, including Chamber of Commerce Drive, or block any access driveway to the parcel.
8. Staff Post #2 shall have a minimum of three employees posted at all times of pick up and drop off to assist in the pick up and drop off operations.
9. Should the operation not function according to the Traffic Circulation Plan or additional safety concerns arise from the implementation of the Plan, after three documented observations this Special Exception shall return to City Council for reconsideration.
10. Monitoring reports shall be provided annually on the anniversary date of this approval. This shall include a site functionality report- to include an analysis on how the Plan is performing on the site and measures taken by the school to facilitate the Plan, enrollment counts for the school and daycare uses, and bell schedules. Failure to timely provide this report

- provides for immediate revocation of this special exception. Requests for additional information shall be responded to within 14 business days.
11. An internal sidewalk from the requested site for the proposed use to the principal buildings shall be constructed to LDC standards by the first anniversary of this approval.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of special exception, Bonita Springs City Council makes the following findings and conclusions:

1. The Applicant has proven entitlement for the requested special exception by demonstrating compliance with the Bonita Springs Comprehensive Plan; and
2. The Applicant has specifically proven:
  - i. Exceptional or extraordinary conditions exist which warrant the proposed use, including but not limited to increased market demand due to change of residency demographics.
  - ii. The request is consistent with the goals, objectives, policies and intent of the Bonita Plan, providing commercial services for a fee.
  - iii. The request meets all performance and locational standards set forth, including consistency with the intent of the U.S. 41 Overlay District in creating a walkable commercial center addresses the balance between auto-oriented design and pedestrian access through enhanced design standards.
  - iv. Will protect, conserve or preserve environmentally critical areas and natural resources.
  - v. Will be compatible with existing or planned uses.
  - vi. Will not cause damage, hazard, nuisance or other detriment to persons or property.
  - vii. In compliance with all general zoning provisions, supplemental regulations and performance standards pertaining to the use set forth in this chapter.
  - viii. No physical constraints, hazards or nuisances which are detrimental to the health and safety of students and to the general operation of the school exist.

**SECTION TWO: INCORPORATION OF RECORD**

City Council of Bonita Springs hereby adopts and incorporates into this resolution the record hearing exhibits and attachments considered as part of the application as follows:

**EXHIBITS:**

A. Legal Description and Sketch of the Subject Property

**ATTACHMENTS:**

- A. Proposed Site Plan
- B. Proposed Traffic Circulation Plan
- C. Proposed AM and PM Queue Layout Plans
- D. Condition Exhibit

**SECTION THREE: EFFECTIVE DATE**

This Resolution shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs, Lee County, Florida, this 21<sup>st</sup> day of July, 2021.

AUTHENTICATION:

\_\_\_\_\_

Mayor	City Clerk
-------	------------

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

Vote:

Carr	Corrie
Purdon	Quaremba
Forbes	Steinmeyer
Gibson	

Date filed with City Clerk: \_\_\_\_\_

## NOTICE OF PUBLIC HEARING

Notice is hereby given that at 5:30pm, Wednesday, July 21st, 2021, the Bonita Springs City Council will hold public hearings in the Bonita Springs City Hall, 9101 Bonita Beach Road, Bonita Springs, Florida 34135, to consider adoption of recommendations made by the Zoning Board for Land Use Hearings and make a final decision on the following case:

### A. SPE20-76117-BOS, GRACE CLASSICAL ACADEMY SPECIAL EXCEPTION

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION TO ALLOW A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) ON APPROXIMATELY 4.65 +/- ACRES WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT AT 3971 VIA DEL REY, BONITA SPRINGS, FL 34134; PROVIDING FOR AN EFFECTIVE DATE.

### B. SPE21-78485-BOS, DISCOVERY DAY ACADEMY SPECIAL EXCEPTION

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST FOR A SPECIAL EXCEPTION WITHIN THE US 41 OVERLAY TO ALLOW A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) ON APPROXIMATELY 1.5 +/- ACRES WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT, LOCATED AT 25355 S. TAMIAMI TRL, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE.

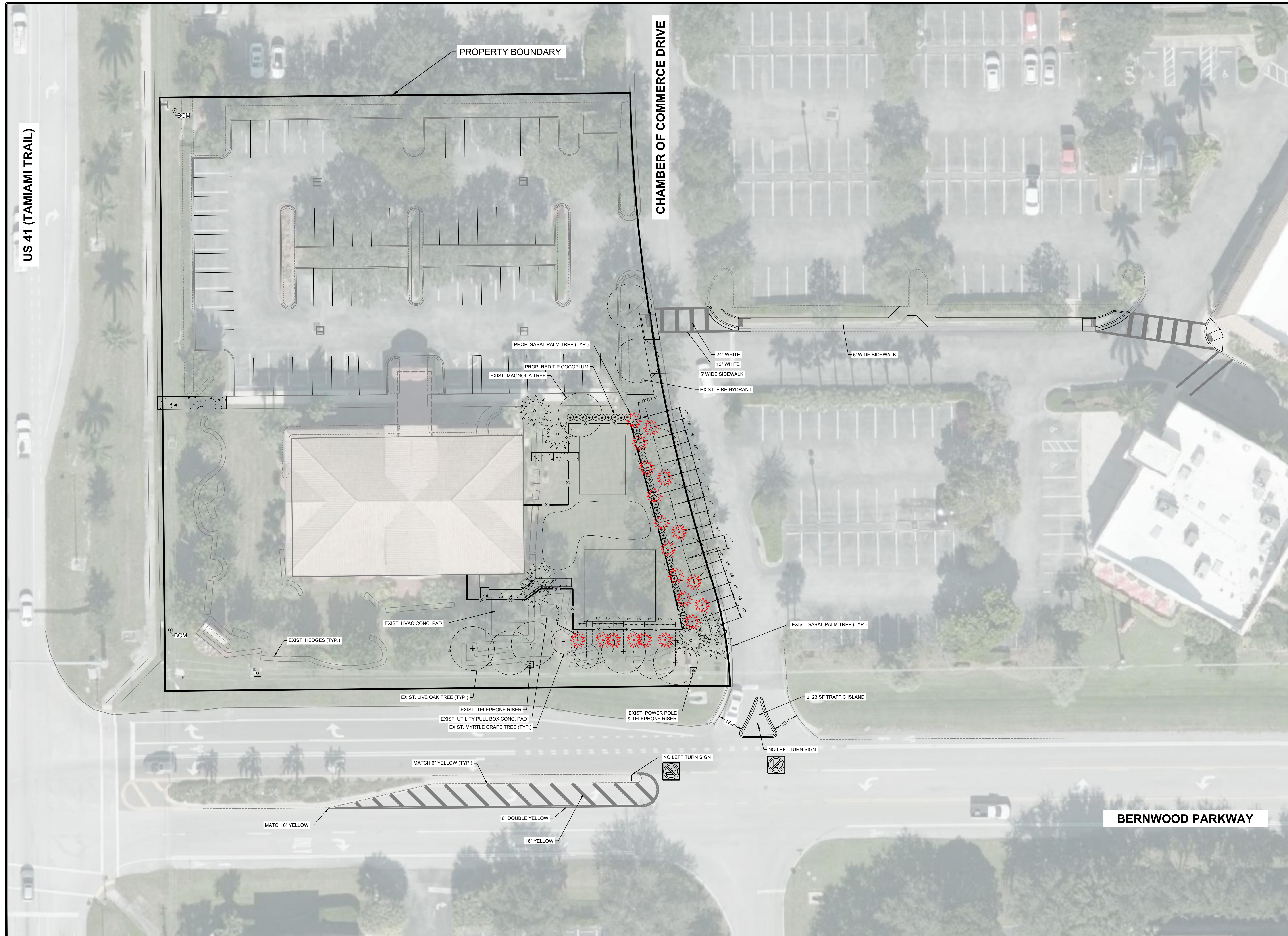
To submit your public comment in writing, please email the City at [CITYMEETINGS@CITYOFBONITASPRINGS.ORG](mailto:CITYMEETINGS@CITYOFBONITASPRINGS.ORG). Any written public comment must be received by 12:00 P.M. on July 21, 2021.

[CLICK HERE](#) to watch the meeting online, or visit the City's website at [WWW.CITYOFBONITASPRINGS.ORG](http://WWW.CITYOFBONITASPRINGS.ORG) and click "How do I?" and then click "Watch a meeting live" to access the live stream.

Interested parties may also attend the public hearing in person to provide comments in accordance with the City's code or as those provisions may be modified by the City Council.

**If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such person may need to ensure that a verbatim record of the proceeding is to be made, to include the testimony and evidence upon which any such appeal is to be based.**

**Any person requiring special accommodations at any of the meetings because of a disability or physical impairment should contact Lisa Roberson, Finance Director, at 239-949-6262, at least 48 hours prior to the meeting.**



PROJECT:  
**DISCOVERY DAY ACADEMY**

LOCATION:  
25355 SOUTH TAMiami TRAIL  
BONITA SPRINGS, FL 34134

CLIENT:  
**DISCOVERY DAY ACADEMY**

CONSULTANT:  
**MORRIS DEPEW**  
ENGINEERS • PLANNERS • SURVEYORS  
LANDSCAPE ARCHITECTS  
FL CA NO. 6532 / FL CERT NO. LB6891 / LC26000330

**Fort Myers**  
2914 Cleveland Avenue  
Fort Myers, Florida 33901  
(239) 337-3993  
Fax: (239) 337-3994  
Toll free: 866-337-7341

**Tallahassee**  
113 South Monroe Street  
1st Floor  
Tallahassee, Florida 32301  
Toll free: 866-337-7341

**Destin**  
5597 Highway 98  
Unit 201  
Santa Rosa Beach, Florida 32459  
Toll free: 866-337-7341

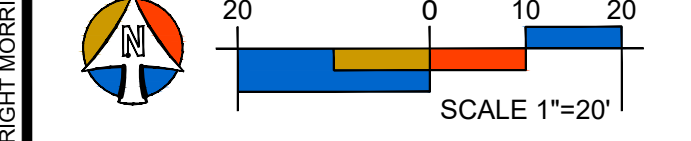
PREPARED BY:

REVISIONS	DATE

PROJECT MANAGER: MGE  
DRAWING BY: TDM  
JURISDICTION: BONITA SPRINGS  
DATE: 7/8/2021

SHEET TITLE:  
**OFFSITE IMPROVEMENTS EXHIBIT**

SHEET NUMBER: 1



JOB/FILE NUMBER: 21010-00

© COPYRIGHT MORRIS DEPEW ASSOCIATES, INC. 2021 ALL RIGHTS RESERVED. 6/3/2021 - Discovery Day Academy Bonita/Plan21010-01 LDC/Current Plans/21010-01 OFFSITE IMPROVEMENTS EXHIBIT.dwg c1\* - Jul 08 2021 03:46:25 pm PLOTTED BY: Knight



**City of Bonita Springs Board  
for  
Land Use Hearings & Adjustments and Zoning Board of Appeals  
MINUTES  
Tuesday, June 29, 2021  
9:00 A.M.**

**I. CALL TO ORDER.**

Chairman Anthony Rascio called the meeting to order at 9:02 A.M.

**II. INVOCATION.**

Board Member Russ Winn furnished the invocation.

**III. PLEDGE OF ALLEGIANCE.**

Chairman Anthony Rascio led the Board in the Pledge of Allegiance.

**IV. ROLL CALL.**

Members in attendance: Chairman Anthony Rascio, Board Member Gerald Benson, Board Member Bruce Galloway, Board Member Gary Gambrell, Board Member Ben Hershenson, Board Member Lynda Waterhouse, Board Member Russ Winn.

**V. APPROVAL OF MINUTES: May 18, 2021.**

Board Member Bruce Galloway motioned for approval of the minutes; Board Member Russ Winn seconded; motion passed unanimously.

**VI. SELECTION OF A VICE-CHAIRMAN.**

Chairman Anthony Rascio postponed discussion until the next meeting in order to provide the two new Board Members time to acquaint themselves with all committee members.

**VII. PUBLIC HEARINGS.****A. CASE NAME: GRACE CLASSICAL ACADEMY SPECIAL EXCEPTION (SPE20-76117-BOS)**

A SPECIAL EXCEPTION REQUEST FOR A 2-PHASED EXPANSION OF ENROLLMENT OF AN EXISTING SCHOOLS, NONCOMMERCIAL, OTHER USE (GRACE CLASSICAL ACADEMY) WITHIN THE AGRICULTURAL (AG-2) ZONING DISTRICT.

- Board Member Gary Gambrell expressed concern that the Zoning Board had only been given one week to review the packets, which he believed was insufficient time for proper review. He made a motion to hold off on discussion until the next meeting. Chairman Rascio stated that the time given was within the usual time frame and felt the cases too important to wait another month for discussion.

**VIII. SWEARING IN.**

- City Attorney Derek Rooney placed all witnesses under oath.

**1. APPLICANT PRESENTATION – CASE A.****Presenters:**

D. Wayne Arnold, Q. Grady Minor & Associates, P.A.

- Mr. Wayne Arnold provided a presentation (copy in Clerk's file) outlining the special exception request to allow an expansion of the K-8 private school, Grace Classical Academy. The site was previously approved for 48 students. The Land Development Code (LDC) allowed Lee County noncommercial schools by right in the AG-2 district, all others by special exception only. The Applicant was granted a temporary use for 64 students total, expiring on August 27, 2021.
- The request included a two-phased expansion. The first phase requested was to enroll 90 students within the existing Family Life Center building, and the second phase requested was to enroll 160 students, within the existing Family Life Center building and construction of portable or modular classrooms in the rear of the property. A preliminary conceptual site plan was provided.
- Mr. Arnold provided discussion points on Operational Changes such as access to Mango Drive. Two neighborhood meetings were held to address the traffic concerns. Phase 1 and 2 stacking and Special Exception criteria were discussed.
- Chairman Anthony Rascio questioned how the locations for the cones were chosen. He suggested that to avoid confusion, it might make more sense to place the cones closer to Mango Drive. Mr. Arnold replied that it could be done with a second set of cones.

**2. STAFF REPORT.**

- Ms. Mary Zizzo, Community Development, provided the staff presentation (copy in Clerk's file) by reviewing the Special Exception request and areas of agreement. Staff recommended approval subject to the conditions outlined in the report. The location and site plan were

reviewed. Ms. Zizzo stated that pick-up and drop-off operation was observed to ensure it was operating as proposed.

- Staff found that the proposed use was complimentary to the Place of Worship use. Additionally, the proposed expansion was sensitive to the nearby residential uses, requiring all school traffic to utilize Vanderbilt Drive for ingress and egress. A comprehensive review of the Special Exception findings was also given.
- Ms. Zizzo provided an overview of Phase 1 and 2 Stacking Plans and the Circulation Plan. The presentation concluded with staff's final recommendations.
- Chairman Rascio asked to review Recommendation Number 4, wanting assurance that the number of vehicles would be enough to ensure that no queue would extend onto the roadways. Ms. Zizzo responded in the affirmative, adding that if the site was not functioning the way it had been proposed, then the applicant would need to make site improvements earlier on to utilize more of the site to accommodate all the vehicles.
- Chairman Rascio sought clarification on Recommendation Number 6 and if it referred only to Phase 2. Ms. Zizzo stated it applied to both Phase 1 and 2 to and was worded to assure that Mango Drive would not be utilized. Chairman Rascio asked about a directional sign, and Ms. Zizzo used the Circulation Plan to show the location for the "No Right Turn" sign. Chairman Rascio asked about Recommendation Number 8 inquiring if staff would be responsible for monitoring compliance. Ms. Zizzo stated the expectation was for staff to maintain compliance.
- Chairman Rascio inquired about Recommendation Number 9 and if any thought had been given to a more frequent proof of enrollment rather than annually. Ms. Zizzo stated that typically, annual enrollment was easier to monitor but offered to accommodate. Chairman Rascio requested a quarterly enrollment submission provided that Community Development design an appropriate form for the school administrator. Ms. Zizzo replied in the affirmative.
- Chairman Rascio questioned who would be responsible for observing appropriate operation of the stacking plan referred to in Recommendation Number 11. Ms. Zizzo stated City staff would be the observers and report feedback accordingly.
- Board Member Bruce Galloway sought clarification in separating the impact between the two uses on the site. Ms. Zizzo explained that during the week it would be for school use and on the weekend, it would be church use. Grace Academy Principal, Amy Mauriello, and New Life Church Pastor, James Julian, both spoke about their respective uses.

#### **IX. PUBLIC COMMENT.**

- Resident Quinn Ruelle, President of the Vanderbilt Office Park Owner's Association, expressed concern about the amount of traffic in the area during season and did not see how it could be monitored appropriately. He believed the expanded use to be excessive for the site.
- Resident of Mango Drive, Marianna Toledo, questioned the "End of City Maintenance" sign located on her street, and who maintained that patch of area of Mango Drive. She expressed

concern over increased traffic in the area over time. Ms. Toledo stated her concerns about regulation of the road. City Attorney, Derek Rooney, explained the meaning of the sign in question and the regulation of uses.

- Resident of Mango Drive, Cathy Dimes, stated she offered residents of the street to pay for a gate at the church to close off the road.
- Resident of Mango Drive, Donna Howell, expressed concern over the increased traffic and speed of those going to the church or school. She believed the road to be dangerous.
- Resident of Mango Drive, Diana Toledo, commented that the area used to be balanced and a quiet street. She believed the character of the area was changing in a negative way.

*End of Public Comment.*

- Mr. Arnold responded to comments stating that Applicant had met the criteria for the conditional use and felt the traffic impacts were negligible. He confirmed that he was in agreement with the staff's recommendations.
- Board Member Bruce Galloway voiced concern about the vote as Special Exceptions were all about impact. He questioned if Public Works had reviewed the traffic study. Mr. John Dulmer, Community Development, replied that Public Works did a cursory review, and staff's Transportation Engineer had approved the study confirming the conditions were appropriate for the use.
- Item A - Chairman Anthony Rascio called for a motion to approve with the revised conditions as agreed to by the Applicant, and Board Member Ben Hershenson entered a motion to approve the request consistent with the findings of staff; Board Member Russ Winn seconded; the motion carried 5 to 1.

<b>RESULT:</b>	<b>PASSED [5-1]</b>
<b>MOTION BY:</b>	Ben Hershenson, Board Member
<b>SECOND BY:</b>	Russ Winn, Board Member
<b>AYES:</b>	Benson, Hershenson, Rascio, Waterhouse, Winn
<b>NAYS:</b>	Galloway
<b>ABSTAINED:</b>	Gambrell

- Chairman Anthony Rascio recessed the meeting for 10 minutes.

**B. CASE NAME: DISCOVERY DAY ACADEMY SPECIAL EXCEPTION (SPE21-78485-BOS)**

A SPECIAL EXCEPTION REQUEST FOR A SCHOOL, NONCOMMERCIAL, OTHER USE (DISCOVERY DAY ACADEMY) WITHIN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT.

**3. APPLICANT PRESENTATION – CASE B.**

**Presenters:**

Tina Ekblad, Morris-Depew Associates

Cindy Leal, Morris-Depew Associates  
Elizabeth Basart, Discovery Day Academy  
Bill Morris, Morris-Depew Associates

- Ms. Tina Ekblad gave the introduction of the key presentation speakers, Mr. Bill Morris, Ms. Cindy Leal, and Ms. Elizabeth Basart. Ms. Basart provided the background and overview of the academy and its program explaining the need for relocation.
- Ms. Cindy Leal provided a presentation (copy in Clerk's file) reviewing the location, site and proposed uses. The Special Exception request was to permit Discovery Day Academy, a private K-5 school currently located in Estero, to relocate to the former jewelry retail building at 25355 S. Tamiami Trail within the Prado at Spring Creek shopping center. The Applicant proposed to relocate a daycare for infants to preschool age with 40 children maximum.
- Mr. Bill Morris continued the presentation discussing traffic and circulation, and traffic facilities of the proposed area. He explained the different commercial uses within the development. Mr. Morris provided the Traffic Analysis, Traffic Operations Plan, the Queuing Analysis, and Traffic Safety as requested by staff.
- Ms. Leal provided discussion of Special Exception considerations and feedback from two neighborhood meetings held for the project. She presented the points of how the project was consistent with the goals and objectives of the City's Comprehensive Plan.
- Board Member Ben Hershenson questioned the validity of the traffic study conducted in March with COVID impacting traffic and several businesses having left the development. His concern was that the study did not reflect normal traffic patterns. Mr. Morris responded that based on numbers from prior years, the impact to that section of Tamiami Trail would be incremental, very small.
- Chairman Rascio expressed concern about the two-vehicles-per-minute estimate, and the danger of vehicles arriving in two rows. Mr. Morris explained that the plan had been to avoid putting any traffic on Bernwood Drive. Ms. Basart provided the protocol of the current successful pick-up operation.

#### 4. STAFF REPORT.

- Ms. Mary Zizzo, Community Development, presented the report (copy in Clerk's file) providing reasons for the Special Exception and reviewed the site plan.
- Mr. Tom Ross, Community Development, presented traffic concerns noting that the traffic counts showed a significant amount of traffic in the mornings designed to turn left, causing stacking. The analysis showed the vehicle queue could potentially stretch over 400 feet. Also of concern was the arrival time for all students which was the same. Applicant proposed to have all traffic go towards the north, which staff agreed to. Staff was concerned about the use of cones and temporary closure. Managing compliance would be difficult.
- Mr. Ross discussed the application of Condition 9 stating that should the operation not function according to the plan and Applicant is found in violation, the Special Exception

approval would be reconsidered by the City Council. Ms. Zizzo summarized the analysis and listed the staff recommendations.

- Ms. Tina Ekblad and Ms. Elizabeth Basart provided rebuttal to questions and concerns.
- Chairman Anthony Rascio stated that he did not believe the location to be appropriate for an elementary school.
- Board Member Ben Hershenson believed in the mission of the school but must weigh what was the greater good. Health, safety, and welfare override all else. He did not believe he could support the request.
- Board Member Gary Gambrell commended the academy and founder for their mission. He asked if the space had been leased and renovations already started. Ms. Basart responded in the affirmative. Board Member Gambrell disclosed he had been by the site and saw the work occurring.
- Board Member Gerald Benson stated he would like to approve and appreciated the Applicant's dilemma. He believed the current property owner had a responsibility to manage the property while addressing the changes in marketing conditions and make improvements. Board Member Benson agreed with staff's analysis and recommendations. He believed the median recommended was appropriate. If all the recommendations by staff were agreed to, then he would vote in favor.
- Chairman Anthony Rascio recessed the meeting for 5 minutes at the request of the City Attorney to allow Applicant to confer with the consultant.
- Mr. John Dulmer spoke about the agreement between staff and Applicant where safety of the children was at issue and not aesthetics. They would be seeking solutions that provide that level of safety at a lower cost than the recommended wall between today's meeting and the City Council meeting. The time would be used to work through the traffic flow and evaluating alternative locations for the sidewalk.
- Item B - Chairman Anthony Rascio called for a motion to recommend approval of the Applicant's Special Exception with the stipulation that the three outstanding conditions be resolved, and Board Member Gary Gambrell entered a motion for a roll call; Chairman Anthony Rascio seconded.
- Board Member Bruce Galloway believed this request to be the first of many to come with shopping centers and malls closing, trying to find new uses for the space. He believed the site was not appropriate for an elementary school, but if the three outstanding conditions were resolved, he would vote in favor.
- Board Member Gary Gambrell reiterated that only being given a few days to consider the complex case was an inadequate amount of time. He abstained. City Attorney, Derek Rooney, instructed Board Member Gambrell that he could only abstain if there was a direct conflict to which he stated that he was in conflict with the law. Mr. Rooney informed that abstaining would be treated as a vote of denial. Board Member Gambrell stated he would not vote.

- Board Member Russ Winn voted in favor and believed that staff had given Applicant an opening to assist in taking care of some arrangements. He approved with the noted stipulation of resolution of the outstanding conditions.
- Chairman Anthony Rascio stated he was not in favor of approval reiterating his belief that the location was not appropriate for an elementary school.
- Board Member Ben Hershenson needed to see the actual results so at that point, he could not vote in favor.
- Board Member Gerald Benson felt if staff and Applicant could work out the outstanding conditions to the satisfaction of City Council, he voted in favor. He believed a median or traffic cop was required for the site.
- Board Member Lynda Waterhouse voted in favor with the stipulations being met.

<b>RESULT:</b>	<b>PASSED [4-3]</b>
<b>MOTION BY:</b>	Gary Gambrell, Board Member
<b>SECOND BY:</b>	Anthony Rascio, Chairman
<b>AYES:</b>	Benson, Galloway, Waterhouse, Winn
<b>NAYS:</b>	Gambrell, Hershenson, Rascio

**X. ADJOURNMENT.**

There being no further items to discuss, Chairman Rascio adjourned the meeting at 12:30 P.M.

Respectfully submitted,

\_\_\_\_\_

Laurie K. Hamm, Recording Secretary

APPROVED:

BONITA SPRINGS ZONING BOARD:

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

AUTHENTICATED:

\_\_\_\_\_

Anthony Rascio, Chairman

**BONITA SPRINGS, FLORIDA  
COMMUNITY DEVELOPMENT DEPARTMENT  
ZONING DIVISION  
STAFF REPORT**

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**PROJECT NAME: DISCOVERY DAY ACADEMY**

**TYPE OF CASE: SPECIAL EXCEPTION**

**CASE NUMBER: SPE21-78485-BOS**

**HEARING DATE: JUNE 29, 2021**

**PLANNER: MARY ZIZZO, ESQ.**

**REQUEST AND STAFF RECOMMENDATION**

A special exception request for a School, Noncommercial, Other use (Discovery Day Academy) within the Community Commercial (CC) zoning district.

**I. APPLICATION SUMMARY:**

A. Applicant: Elizabeth Anne Basart of Discovery Day Academy IV, Inc.

B. Agent: Morris-Depew Associates, Inc.

C. Property Owner: Isram Prado, LLC

D. Request: A special exception request for a School, Noncommercial, Other use (Discovery Day Academy) within the Community Commercial (CC) zoning district.

E. Location: 25355 S Tamiami Trail, Bonita Springs, FL 34135

F. Future Land Use Designation, Current Zoning and Use of Property:

Future Land Use: General Commercial

Current Zoning: Community Commercial (CC). U.S. 41 Overlay District.

Current Use: Commercial Plaza. Requested Building: Vacant Commercial.

G. Surrounding Land Use:

<u>Existing Zoning &amp; Land Use</u>	<u>Future Land Use Map</u>
North: CC; Prado at Spring Creek Shopping Center- Restaurants, Strip Mall, Walgreens	General Commercial
East: CN-2, Vacant then Railroad	Public/Semi-Public
South: CN-2, Commercial Plazas and RM-6, San Mirage Condominium	General Commercial
West: Residential Planned Development (RPD), Pelican Landing Community	Moderate Density Mixed-Use/Planned PUD

Staff recommends **CONSIDERATION** of the Applicant’s requested special exception to allow the use of a noncommercial school, other, at 25355 S Tamiami Trail.

In the event that the Zoning Board desires to recommend approval, or the City of Bonita Springs City Council decides to approve the special exception request, the Staff submits that the conditions at the end of this Staff Report are deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public, specifically the families of the proposed noncommercial school, other shopping center patrons, and the surrounding area.

**II. BACKGROUND AND INFORMATIONAL ANALYSIS**

Introduction/Synopsis

The special exception request is to permit Discovery Day Academy, a private K-5 school currently located in Estero, to relocate to the former jewelry retail building at 25355 S. Tamiami Trail within the Prado at Spring Creek shopping center.

The Applicant proposes to relocate a daycare for infants to preschool age with 40 children maximum to coexist with the proposed K-5 private school use. The daycare use is permitted by right.

The Applicant requests to enroll 72 students for the K-5 private school use. Pursuant to Land Development Code (LDC) Sec. 4-1970, noncommercial schools not permitted by right are required to obtain special exception approval. New elementary schools shall have access to local or collector streets, whenever possible and will not be approved which, in the opinion of the City Council, are proposed for locations that are exposed to physical constraints, hazards or nuisances which are detrimental to the health and safety of clients and to the general operation of the school.

The subject property is owned by Isram Prado, LLC, which currently has multiple restaurants, a movie theater, an ice cream shop and retail shops. The building the Applicant proposes to locate to was previously occupied by a jewelry retailer. The Applicant proposes to make significant

changes to convert this building into a two-story educational facility and install a play area on the eastern side of the building (Attachment A).

The Applicant has stated that this use will not generate more Average Daily Trips (ADT's) than the previous use. While this may be true, this does not address the traffic-safety concerns of Staff. The timing of generated trips is more important than the total number of trips created. This use generates half of all its trips in the morning when people are commuting to work, school, etc. or the "AM Peak". This will create conflicts and congestion at the intersection of Bernwood Parkway and Chamber of Commerce Drive. This congestion is in addition to the existing traffic generated by Spring Creek Elementary School. This congestion will have an impact on the U.S. 41 intersection. The two simplest solutions to this problem are to either not allow this use or to control the ingress and egress between Chamber of Commerce Drive and Bernwood Parkway. The Applicant attempted to address this by proposing blocking ingress and egress with cones at the drive at Chamber of Commerce temporarily twice a day. This approach is inappropriate for a variety of safety and legal concerns and Staff believes a permanent restriction is more appropriate.



Figure 1: Location Map

Source: Energov

Special Exception Review Criteria – LDC Sec. 4-131(c)(2)

*Considerations. In reaching their decision, the zoning board must consider the following, whenever applicable:*

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.*
- b. The testimony of any applicant.*
- c. The recommendation of staff.*
- d. The testimony of the public.*
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Bonita Plan.*
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*
- h. Whether the request will be compatible with existing or planned uses.*
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.*
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.*

Reviewing these criteria, Staff makes the following findings:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.*

The Applicant states that COVID-19 has moved retail sales to internet sales, causing more commercial locations to be vacant. Staff does not find a vacant space to be a changed condition to make this request appropriate.

- d. The testimony of the public.*

At the first neighborhood meeting, concerns of traffic along Bernwood Parkway were presented, as it was voiced that traffic along the road already exists from the existing Spring Creek Elementary School. Concerns were also submitted regarding restricting new restaurants from obtaining alcohol licenses if this school is approved. No public notice responses were received at the time of this Staff Report publishing.

- e. Whether the request is consistent with the goals, objectives, policies and intent of the Bonita Plan.*

The property is located within the General Commercial future land use of the Bonita Plan. Appropriate uses include a wide range of commercial retail and service uses for residents, visitors and schools. Objective 1.11 requires redevelopment to occur in areas of the City with public facilities. The building is already connected to public facilities, will be renovated to current standards, and is consistent with Objective 1.11 of the Bonita Plan.

f. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The Applicant requests to install a play area on the eastern side of the building, along Bernwood Parkway and Chamber of Commerce Drive. The Applicant proposes to construct a 6-foot fence around this area. They intend to connect their sidewalk to the existing U.S. 41 sidewalk. Staff's opinion is that this does not adequately address all standards required to meet the intent of the U.S. 41 Overlay District.

Staff conditions that the play area be protected by an 8' wall landscaped to LDC standards. This condition serves multiple purposes. The first is to protect those children playing from potentially escaping and immediately entering a road. The second is to protect those inside from potential hazards on the exterior. This could be pedestrian or vehicular traffic that may potentially enter the site. Due to the proximity of and the number of major roads surrounding this property, Staff's opinion is that a wall has more structural integrity in the event of a collision at the site.

This location is within the U.S. 41 Overlay district. The intent of the U.S. 41 Overlay District is to guide future growth and redevelopment along U.S. 41 in a manner that maintains and enhances the aesthetic/visual quality of the corridor, makes efficient use of public infrastructure, protects existing neighborhoods, and balances automobile-oriented development patterns with the pedestrian realm. For this reason, the Applicant is required to connect the existing sidewalk at their proposed location to the one located along U.S. 41 for pedestrian connectivity. To further the commercial development intent and to prevent the expansion of a "strip" commercial development, as intended by the U.S. 41 Overlay District, the site will also be required to connect their existing sidewalk to the principal building sidewalk, approximately 280 linear feet away (*see* Figure 2). The Applicant is required to comply with the intent of all multimodal facility provisions within the LDC.



Figure 2: Internal Pedestrian Connection

Source: Energov

In addition, any required landscaping that is currently absent from or that is removed and/or irreparably damaged as a result of the proposed site improvements/alterations, must be reinstalled, re-established and/or replaced consistent with the site's previously approved development permits and all applicable LDC requirements, as appropriate. At time of local development order review or application, the Applicant shall provide a landscape plan consistent with the requirements of the LDC Sec. 3-414, as well as a site plan with drainage, landscaping, architectural and lighting plans, which shall be dark sky compliant.

Further conditioned, the site will require installation of a raised traffic separator at the intersection of Bernwood Parkway and Chamber of Commerce Drive permitting only westbound ingress and westbound egress to provide a safer intersection and to prevent traffic impacts due to the addition of this proposed use (see Figure 3).

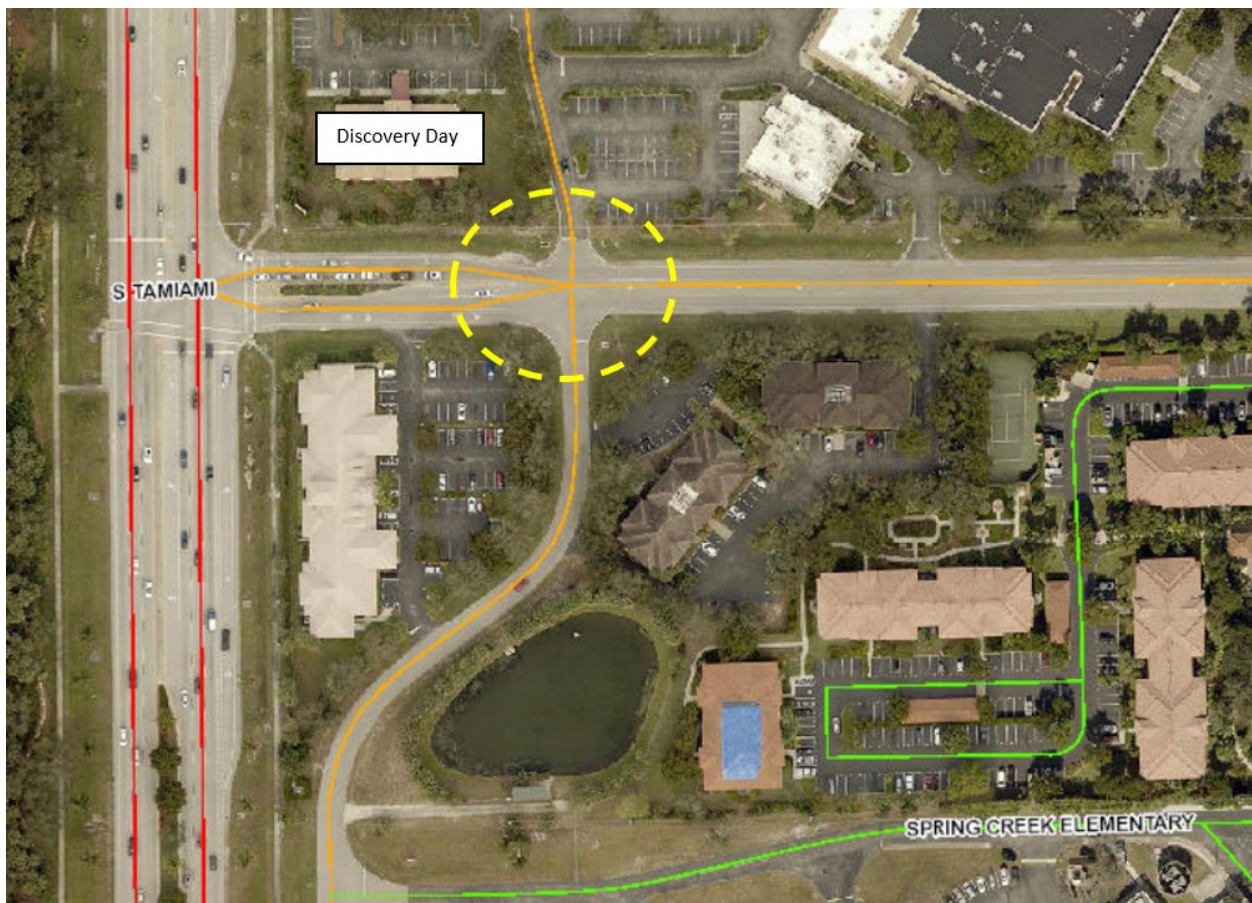


Figure 3: Intersection Map

Source: Energov

*g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*

There are no environmentally critical areas or natural resources at this site.

*h. Whether the request will be compatible with existing or planned uses.*

The proposed use is surrounded by commercial and residential uses. Residential uses are separated by the rights-of-ways of Bernwood Parkway and South Tamiami Trail. The proposed peak times of the school are different from those within the plaza. Those peak times are very similar to that of Spring Creek Elementary School south of Bernwood Parkway. Traffic in this area during these times is of concern. For that reason, the Applicant proposes to send all school traffic to the northern accessway or Timberwilde Drive, although the proposed implementation of it [one (1) staff post and cones], is not agreed to by Staff due to concept and the feasibility of compliance (Attachment B). The intent is to avoid impacts to the intersections of Bernwood Parkway at Chamber of Commerce Drive and at U.S. 41.

The Applicant also indicates that the families of the school may visit those commercial uses within the plaza, increasing patronage. This encourages the compatibility of this use within the existing plaza, coupled with the pedestrian connection from the proposed building to the principal sidewalk connection (*see* Figure 2).

Locating a school within this plaza may change the commercial nature of this plaza in that any new restaurants with outdoor seating requesting consumption on premises not already granted will require a special exception. Further, any existing restaurants with outdoor consumption on premises approval are permitted to continue their operations, unless the use ceases for 6-months or more.

*i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.*

The Applicant states that the requested use is similar in location to other daycares and preschools within the City. Further, the Applicant indicates that all residential uses are separated by rights-of-ways and therefore the possibility of nuisance does not exist. However, should the conditions outlined below not be implemented, Staff believes the request may cause hazard, nuisance or other detriment to persons or property. The proposed play area is in proximity to three roads. As indicated in the Traffic Impact Statement submitted by the Applicant, the intersection of Bernwood Parkway and U.S. 41 is congested. An increase in traffic can be hazardous for local traffic, including the school buses from Spring Creek Elementary School or residents within San Mirage or Bonita Isles.

Further, the proposed AM and PM Queue Layout Plan (Attachment C) provided by the Applicant, if not implemented as conditioned, may cause a backup of traffic on Chamber of Commerce Drive, affecting the businesses currently present and patrons traveling through the plaza.

For these reasons, unless conditioned as outlined below, Staff believes the request may cause damage, hazard, nuisance or other detriment to persons or property.

j. *Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.*

The Applicant has applied for a special exception, as required by LDC Sec. 4-1970. A narrative, site plan, traffic impact statement, traffic circulation plan and queuing plan were provided to support the request. The Applicant held the required neighborhood meetings prior to submitting the request, and again after the request was found sufficient by Staff. The request has been reviewed for compliance with the standards set forth in LDC Chapter Four and no deviations have been requested. Therefore, if approved, site development will be in accordance with the conditions outlined below and in accordance with LDC standards and the U.S. 41 Overlay District.

### Surrounding Zoning

The proposed location of the school is within a commercial shopping center. The location is zoned Community Commercial (CC). The purpose and intent of the CC district is to permit the designation of suitable locations for medium to large-scale consumer-oriented commercial facilities, particularly for multiple-occupancy complexes known as community or regional shopping centers, and to facilitate their proper development and use. In addition to the retail sale of consumer goods, the district is intended to permit a wide range of services, financial and other, including business and professional offices, all arranged in discrete commercial centers or evolving business districts. Such centers or districts differ from neighborhood commercial facilities in concentrating a greater floor area of use and a broader mix of goods and services in order to serve a wider market or service area and a larger population. This is expected to create greater impact on surrounding land uses and therefore require buffering and designed gradients of intensity adjacent to less intense uses.

While the zoning is intended to permit a wide range of services, and the school service is for a fee, this use would be more appropriate in zoning districts such as CS-1 and CS-2 that provide separation and buffers between lower and medium intensity uses such as schools and higher-intensity commercial uses.

In addition, locating a school within this plaza may change the commercial nature of this plaza in that any new restaurants with outdoor seating requesting consumption on-premises not already granted will require a special exception. Further, any existing restaurants with outdoor consumption on premises approval are permitted to continue their operations, unless the use ceases for 6-months or more.

To encourage the site to function as part of the commercial plaza and to further the intent of the U.S. 41 Overlay District and the future land use, Staff recommends the condition that the building's sidewalk shall connect to the principal buildings of the plaza. In this case, the closest connection would be the restaurant sidewalk to the east (*see* Figure 2).

### Neighborhood Compatibility

Surrounded by commercial and residential uses, the school has the ability to serve patrons who live in the surrounding area or those that frequent the businesses within the complex.

The Applicant proposes that this use will encourage or increase the patronage to the businesses within the plaza. As conditioned below, the sidewalk connection from the proposed building to the existing sidewalk to the east will encourage and facilitate that patronage (Figure 2).

Just south of the site is Spring Creek Elementary School, which has a capacity of 723 students. Spring Creek Elementary School is in session from 8:55 AM – 3:10 PM. The Applicant's proposed hours of operation are 8:30 AM- 3:20 PM pickup for grades K-2 and 3:30 PM pickup for grades 3-5.

The Applicant proposes their peak driving times will not conflict with the nearby school and will be different from those peak hours of the commercial plaza they propose to occupy. Staff still has concerns regarding traffic congestion and impacts of this proposed use. The conditions provided address these concerns by removing eastbound access to and from Chamber of Commerce Drive.

### Environmental Considerations

The subject property has already been developed and impacted. There are no environmentally critical areas or natural resources located on site. Any future development will be in accordance with LDC standards.

### Traffic

The proposed peak traffic times offered by the Applicant are 8:15-8:30 AM, for 8:30 AM start time and 3:10 – 3:30 PM, for 3:20 PM and 3:30 PM staggered release times. The daycare operates from 7:00 AM- 5:30 PM. According to the Applicant's TIS, the uses combined provide 114 trips in the AM peak hour and 78 trips in the PM peak hour. Staff notes that these traffic volumes may increase or decrease day to day and year to year as the number of children in each vehicle varies.

The Applicant purports that compared to many of the uses permitted in the zoning district by right, the requested use's increase in trips is de minimus. However, the intersection of Bernwood Parkway and Chamber of Commerce Drive/Elementary Way is very active during the AM peak hour. The Applicant proposes to use cones to close the north leg of the intersection at Bernwood Parkway and Chamber of Commerce Drive to prevent ingress and egress to/from the plaza via Bernwood Parkway during their peak arrival and dismissal times and detour school families and patrons to the northern internal accessway or the traffic light at Timberwilde Drive (Attachment C). Public Works does not agree with this method nor permit cones used within the public right-of-way as an appropriate traffic control device. Temporary closure of this driveway does not abate the problem unless the eastbound left-hand turn lane is also closed. The idea of temporarily closing this intersection twice a day would be confusing to the traveling public and would not further the interest of safety.

**DISCOVERY DAY STUDENT COUNT & ARRIVAL  
AND DISMISSAL TIMES**

<b>AGE GROUP / GRADE</b>	<b>NUMBER OF STUDENTS</b>	<b>ARRIVAL TIME</b>	<b>DISMISSAL TIME</b>
<b>INFANTS</b>	4	7:00 - 8:00	4:00 - 5:30
<b>ONES</b>	6	7:00 - 8:00	4:00 - 5:30
<b>TWOS</b>	6	7:00 - 8:00	4:00 - 5:30
<b>THREES</b>	12	7:00 - 8:00	4:00 - 5:30
<b>FOURS</b>	12	7:00 - 8:00	4:00 - 5:30
<b>KINDERGARTEN</b>	12	8:30	3:20
<b>FIRST</b>	12	8:30	3:20
<b>SECOND</b>	12	8:30	3:20
<b>THIRD</b>	12	8:30	3:30
<b>FOURTH</b>	12	8:30	3:30
<b>FIFTH</b>	12	8:30	3:30

	<b>DISCOVERY DAY</b>	<b>SPRING CREEK ELEMENTARY <sup>(1)</sup></b>
AM Time Window for Vehicles to Arrive at School	8:15 - 8:30	8:35 - 8:55
PM Time Window for Vehicles to Arrive at School	3:10 - 3:30	2:50 - 3:10

<sup>(1)</sup> Spring Creek Elementary Bell Times are 8:55 AM - 3:10 PM. Doors open at 8:25 AM and children are eligible for free breakfast.

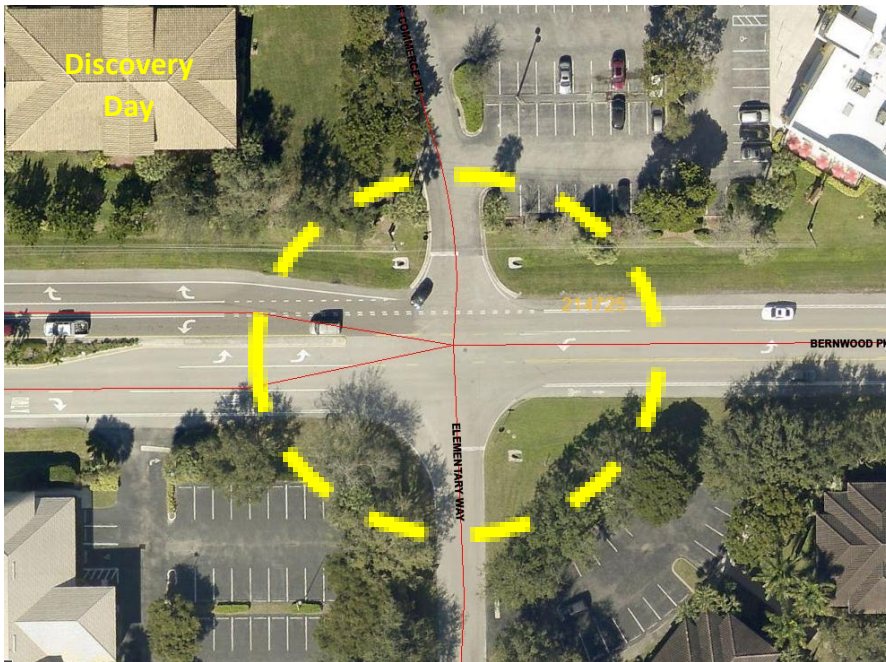


Figure 4: Intersection Map 2

Source: Lee County GIS

Staff could be in agreement with the proposed ingress and egress points to the North at the northern access point to the plaza and Timberwilde Drive; however, in the interest of safety for not only those patrons visiting but also those many students leaving Spring Creek Elementary School to the South and traffic approaching westbound, Staff recommends a condition that a traffic improvement be installed prior to occupancy, requiring a raised median that eliminates westbound ingress and egress into the plaza to provide for a right turn in and out movement only. The insertion of cones at a busy intersection, in Staff's opinion, will not provide the safety assurance that a permanent improvement will. Further, Public Works will not permit the obstruction within the public right-of-way.

#### Internal Site Functionality

The building has an immediate parking area with 67 spaces. The LDC requires one parking space per employee and one space per 40 students for the school use. The Applicant states they have 15 employees. The daycare use requires two spaces per employee in addition to adequate and safe provisions for loading and unloading of clients. Therefore, based on 15 employees for each use, 47 spaces are required for the two uses combined. Staff agrees that sufficient parking exists.

However, one major component of review for a school use is the pickup and drop off operations and the queuing lines. Functionally, queuing lines for the pickup operations should be accommodated entirely within a site. In this case, that would be the immediate parking area outside of the school. The Applicant provided a proposed AM and PM Queue Layout Plan indicating that 42 vehicles would need to be accommodated, which they propose via a double stacking operation, 32 in a stacked queue and 11 parking spaces if the queuing is filled (*see* Attachment C). The Applicant provides that there will be a Staff post at the entrance to the parking lot to direct exiting vehicles to turn left onto Chamber of Commerce Drive to avoid traffic from outflowing into Bernwood Parkway (Attachment B). This staff member would also be tasked with directing queuing vehicles into the overflow parking spaces if the queue fills up. In addition, another Staff post is proposed to be located at the awning and will manage students getting in and out of the vehicles during arrival and dismissal times. The Applicant indicates that those parents looking to enter the building during those times will wait in the queue line and then park in the overflow queuing spaces, half of which will then need to cross the traffic lanes to bring their children in or out.

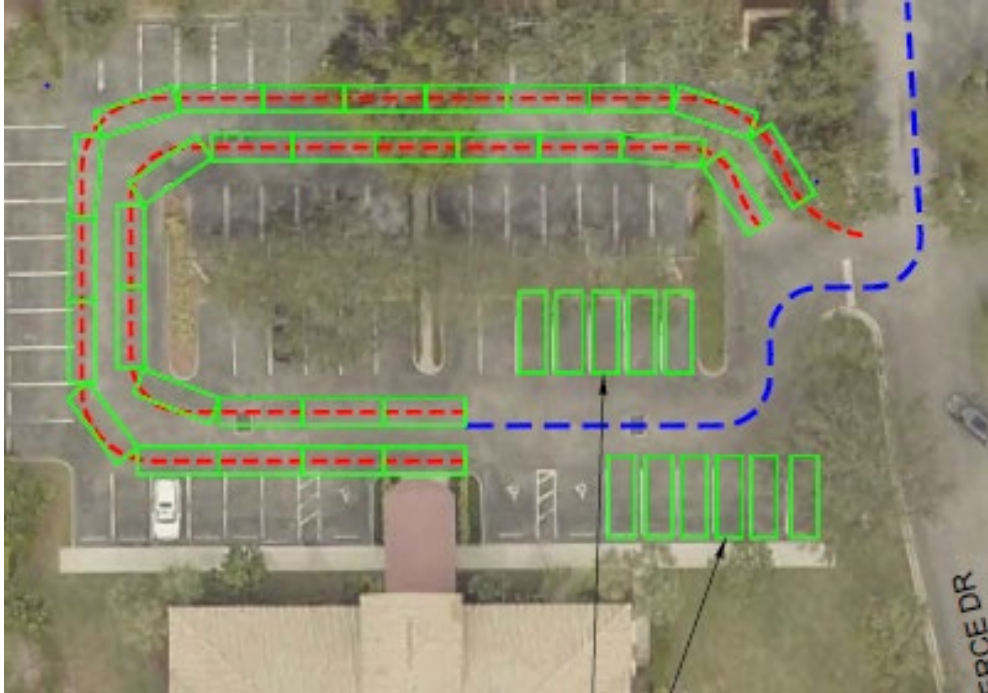


Figure 5: Applicant's Queue Layout Plan

Submitted: 6/10/2021

Staff has concerns regarding the ability of this operation to function according to the proposed plan. For this reason, Staff conditions that active monitoring occur, and should the operation not function according to the Traffic Circulation Plan and cause safety concerns or overflow onto Chamber of Commerce Drive after three documented observations, then this special exception shall return to City Council for reconsideration.

#### Comprehensive Plan Considerations

The subject property is located within the General Commercial future land use category according to the Future Land Use Map of the City's Comprehensive Plan. The General Commercial category is described in **Policy 1.1.14** as:

***Policy 1.1.14 General Commercial*** – Intended to accommodate a wide range of commercial uses serving the general population of the City. This designation recognizes, but is not specifically limited to, properties that have been developed, have received development approval or have been zoned for commercial use prior to the adoption of the Comprehensive Plan.

- a. *Appropriate uses include a wide range of commercial retail and service uses for residents and visitors; hotels/motels; offices; light industrial uses; schools; recreation; public and semi-public uses; multi-family uses up to 10 units per acre within the approximately 1,468 gross acres land area in the land use category; and mixed residential and commercial use in planned developments.*
- b. *If affordable housing is provided, residential density may be increased by up to five additional units per acre.*

- c. *Maximum allowable height of structures shall be 75 feet from the base flood elevation to the eaves except that no new structures or modification of existing structures located on the islands west of the mainland may be constructed in excess of 35 feet in height.*
- d. *Nonresidential uses shall be limited to a maximum floor area ration (FAR) of 1.2*

The requested use of a Noncommercial School, Other use is consistent and compatible with the General Commercial future land use provisions in the City's Comprehensive Plan.

### Findings & Conclusion

It is Staff's opinion that the special exception request for a new noncommercial school, other use is consistent with the provisions of the Comprehensive Plan. The proposed location may be compatible with existing uses but does present site plan challenges which can be addressed as set forth in the recommended conditions of approval. Based on the evidence presented, if the use functions as conditioned, it will not cause damage, hazard or nuisance, will not impact environmentally critical areas (none exist on the subject property), and is located in an area with adequate public facilities. If improvements are made as conditioned, the school will mitigate the current exposure to physical constraints, hazards or nuisances which are detrimental to the health and safety of students and to the general operation of the school. Staff deems the recommended conditions of approval necessary for the protection of the health, safety, comfort, convenience or welfare of the general public, specifically the families of the proposed noncommercial school, other shopping center patrons, and the surrounding area.

### **III. RECOMMENDATION:**

Staff recommends **CONSIDERATION** of the Applicant's requested special exception to allow the use of a noncommercial school, other, at 25355 S Tamiami Trail. In the event that the Zoning Board desires to recommend approval, or the City of Bonita Springs City Council decides to approve the special exception request, the Staff submits that the following conditions be required and implemented as written to achieve functionality that Staff deems appropriate of the site for the proposed use:

1. This approval is for a special exception to allow the operation of a noncommercial school, other use located at 25355 S Tamiami Trail. This building is located at the southwestern corner of the Prado at Spring Creek Shopping Center (Attachment A). This use is limited to the requested user, Discovery Day Academy, only, and shall only allow for 72 students K-5, when in conjunction with the daycare use.
2. Any expansion beyond 40 daycare students or 72 elementary students will require additional approvals.
3. The hours of operation are limited to Monday-Friday only from 7:00 AM- 6:00 PM.
4. The intersection of Bernwood Parkway and Chamber of Commerce Drive shall be modified with a raised traffic separator at the intersection of Bernwood Parkway and Chamber of Commerce Drive, permitting only westbound ingress and westbound egress (right in, right out).
5. The proposed play area shall be enclosed with an 8' wall screened to LDC standards.

6. In accordance with the Traffic Circulation Plan (Plan) (Attachment B) provided by the Applicant, all school traffic shall enter and exit from the northern plaza access point or Timberwilde Drive only. The Applicant shall provide copies of the Plan to all parents or those designated to pick up or drop off the students. The Applicant shall provide sufficient staff to enforce and ensure the functionality of the Plan.
7. All traffic shall be managed entirely within the immediate parking lot of the school use. At no time shall vehicle queues extend onto public roadways, including Chamber of Commerce Drive, or block any access driveway to the parcel (Attachment C).
8. Staff Post #2 shall have a minimum of three employees posted at all times of pick up and drop off to assist in the pick-up and drop-off operations.
9. Should the operation not function according to the Traffic Circulation Plan attached or additional safety concerns arise from the implementation of the Plan, after three documented observations, then this special exception shall return to City Council for reconsideration (Attachment B).
10. Monitoring reports shall be provided annually on the anniversary date of this approval. This shall include a site functionality report, enrollment counts for the school and daycare uses, and bell schedules. Failure to timely provide this report provides for immediate revocation of this special exception. Requests for additional information shall be responded to within 14 business days.
11. An internal sidewalk from the requested site for the proposed use to the principal buildings shall be constructed to LDC standards by the first anniversary of this approval.

### **SUBJECT PROPERTY**

The Applicant indicates the STRAP number is: 21-47-25-B2-03204.0000.

### **EXHIBITS**

- A. Sketch and Legal Description of the Subject Property

### **ATTACHMENTS**

- A. Proposed Site Plan
- B. Proposed Traffic Circulation Plan
- C. Proposed AM and PM Queue Layout Plans

# EXHIBIT A

**DESCRIPTION:**  
OUT PARCEL #1

A PORTION OF PARCEL 4, SPRING CREEK EAST UNIT TWO, AS RECORDED IN PLAT BOOK 62, PAGE 65, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LYING IN SECTION 21, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°16'54"W., ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21, FOR 1146.01 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 41 (TAMIAMI TRAIL); THENCE RUN S.00°06'41"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR 1719.96 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.00°06'41"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR 279.50 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 4; THENCE N.89°53'19"E ALONG THE NORTH LINE OF TRACT "A", FOR 265.95 FEET TO A POINT ON A CIRCULAR CURVE, CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS S.88°23'18"E. FOR A DISTANCE OF 186.00 FEET THEREFROM; THENCE RUN NORTHERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 186.00 FEET, THROUGH A CENTRAL ANGLE OF 15°40'01", CHORD BEARING OF N.09°26'40"W. FOR 50.70 FEET, ARC 50.86 FEET TO A POINT OF REVERSE CURVE; THENCE RUN NORTHERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 814.00 FEET, THROUGH A CENTRAL ANGLE OF 16°39'56", CHORD BEARING OF N.09°04'24"W. FOR 232.31 FEET, ARC 233.10 FEET; THENCE RUN S.89°53'19"W. FOR 221.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.50 ACRES, MORE OR LESS. .

**SURVEY NOTES:**

THE DESCRIPTION SHOWN HEREON IS NEW.  
 SKETCH PREPARED IN ACCORDANCE WITH THE STATE OF FLORIDA'S STANDARDS OF PRACTICE FOR SURVEYING, RULE 5J-17 F.A.C.  
 ORIENTATION BASED ON THE WESTERLY RIGHT-OF-WAY LINE OF TAMIAMI TRAIL, AS BEARING S.00°06'41"W. AS PLATTED WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR ELECTRONIC SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS MAP IS NOT VALID.  
 THIS IS NOT A SURVEY!

Digitally signed by  
 Thomas M. Rooks Jr.  
 Date: 2021.02.10  
 18:26:47 -05'00'

PREPARED BY:

THOMAS M. ROOKS JR., P.S.M. DATE  
 FLORIDA CERTIFICATE NO. 6347

PROJECT:  
**DISCOVERY DAY  
 ACADEMY**

LOCATION:  
**SECTION 21 AND 22,  
 T. 47 S., R. 25 E.,  
 LEE COUNTY, FLORIDA**

CONSULTANT:  
  
**MORRIS  
 DEPEW**  
 ENGINEERS • PLANNERS • SURVEYORS  
 LANDSCAPE ARCHITECTS  
 FL. CA. NO. 6632 / FL. CERT. NO. LB6891 / LC26000330

**Fort Myers**  
 2914 Cleveland Avenue  
 Fort Myers, Florida 33901  
 (239) 337-3693  
 Fax: (239) 337-3994  
 Toll free: 866-337-7341

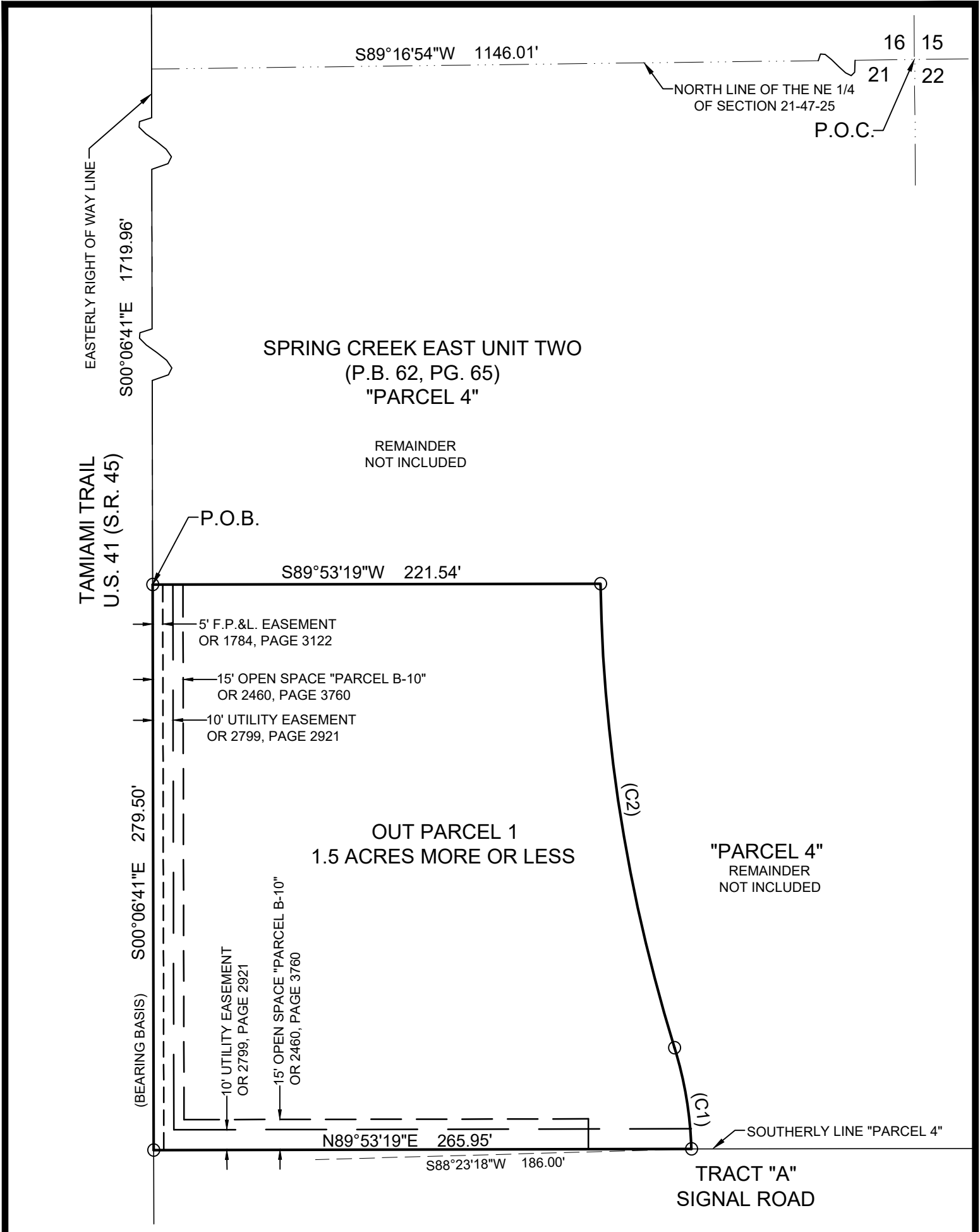
**Tallahassee**      **Destin**  
 113 South Monroe Street      5597 Highway 98  
 1st Floor      Unit 201  
 Tallahassee, Florida 32301      Santa Rosa Beach, Florida 32459  
 Toll free: 866-337-7341      Toll free: 866-337-7341

CLIENT:  
  
**DISCOVERY  
 DAY ACADEMY**

Page 15

PROJECT MANAGER: TMR  
 DRAWING BY: TAB  
 JURISDICTION: CITY OF BONITA SPRINGS  
 DATE: 02-10-2021  
 SHEET TITLE:  
**SKETCH AND  
 DESCRIPTION**

SHEET NUMBER: 1 OF 2  
 JOB/FILE NUMBER: 21010

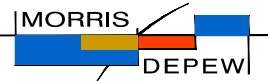


CURVE	RADIUS	C.A.	CHD B.	CHD	ARC
C1	186.00'	15°40'01"	N 09°26'40" W	50.70'	50.86'
C2	814.00'	16°39'56"	N 09°04'24" W	232.31'	233.10'

PROJECT:  
**DISCOVERY DAY ACADEMY**

LOCATION:  
**SECTION 21 AND 22,  
T. 47 S., R. 25 E.,  
LEE COUNTY, FLORIDA**

CONSULTANT:




**MORRIS DEPEU**  
ENGINEERS • PLANNERS • SURVEYORS  
LANDSCAPE ARCHITECTS  
FL CA NO. 6532 / FL CERT NO. 1B6891 / LC26000330

**Fort Myers**  
2914 Cleveland Avenue  
Fort Myers, Florida 33901  
(239) 337-9998  
Fax: (239) 337-9904  
Toll free: 866-337-7341

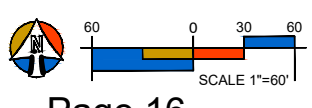
**Tallahassee**  
113 South Monroe Street  
Tallahassee, Florida 32301  
Toll free: 866-337-7341

**Destin**  
5597 Highway 98  
Unit 201  
Santa Rosa Beach, Florida 32450  
Toll free: 866-337-7341

CLIENT:



**DISCOVERY DAY ACADEMY**

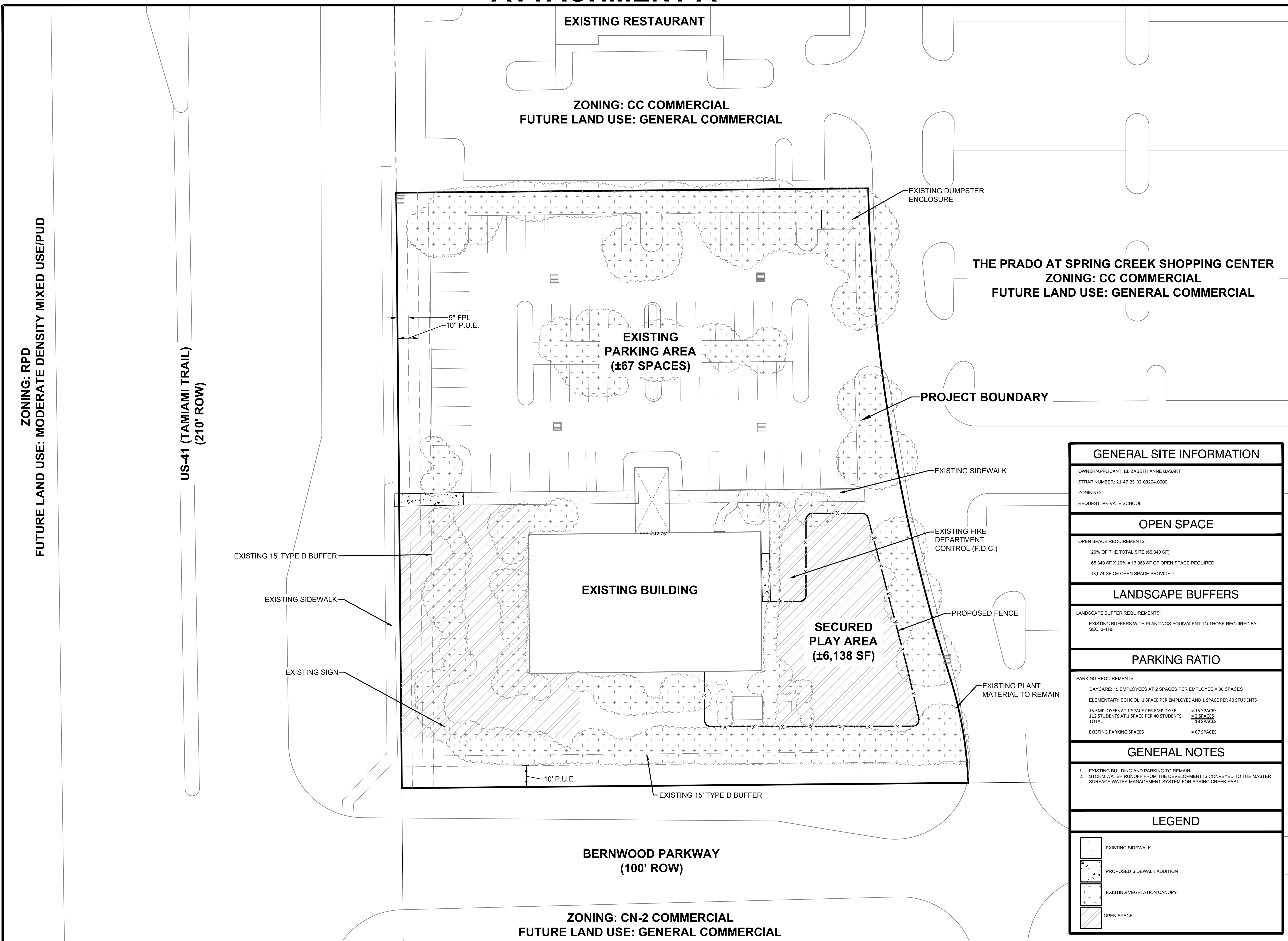


Page 16

PROJECT MANAGER:	TMR
DRAWING BY:	TAB
JURISDICTION:	CITY OF BONITA SPRINGS
DATE:	02-10-2021
SHEET TITLE:	<b>SKETCH AND DESCRIPTION</b>
SHEET NUMBER:	2 OF 2
JOB/FILE NUMBER:	21010

© COPYRIGHT MORRIS-DEPEW ASSOCIATES, INC. 2021 ALL RIGHTS RESERVED I:\21010 - Discovery Day Academy Bonita\Plans\21010-Sketch-Desc\_outparcel.dwg <SKET-DESC> - Feb 10 2021 03:43:46 pm PLOTTED BY: bhanley

# ATTACHMENT A



GENERAL SITE INFORMATION	
OWNER/APPLICANT: ELIZABETH ANNE BASART	
STRAP NUMBER: 21-47-25-82-03204.0000	
ZONING: CC	
REQUEST: PRIVATE SCHOOL	
OPEN SPACE	
OPEN SPACE REQUIREMENTS:	
20% OF THE TOTAL SITE (65,340 SF)	
65,340 SF X 20% = 13,068 SF OF OPEN SPACE REQUIRED	
13,074 SF OF OPEN SPACE PROVIDED	
LANDSCAPE BUFFERS	
LANDSCAPE BUFFER REQUIREMENTS:	
EXISTING BUFFERS WITH PLANTINGS EQUIVALENT TO THOSE REQUIRED BY SEC. 3-418.	
PARKING RATIO	
PARKING REQUIREMENTS:	
DAYCARE: 15 EMPLOYEES AT 2 SPACES PER EMPLOYEE = 30 SPACES	
ELEMENTARY SCHOOL: 1 SPACE PER EMPLOYEE AND 1 SPACE PER 40 STUDENTS	
15 EMPLOYEES AT 1 SPACE PER EMPLOYEE = 15 SPACES	
112 STUDENTS AT 1 SPACE PER 40 STUDENTS = 3 SPACES	
TOTAL = 18 SPACES	
EXISTING PARKING SPACES = 67 SPACES	
GENERAL NOTES	
1. EXISTING BUILDING AND PARKING TO REMAIN.	
2. STORM WATER RUNOFF FROM THE DEVELOPMENT IS CONVEYED TO THE MASTER SURFACE WATER MANAGEMENT SYSTEM FOR SPRING CREEK EAST.	
LEGEND	
	EXISTING SIDEWALK
	PROPOSED SIDEWALK ADDITION
	EXISTING VEGETATION CANOPY
	OPEN SPACE

PROJECT:  
**DISCOVERY DAY ACADEMY**

LOCATION:  
25355 SOUTH TAMIAMI TRAIL  
BONITA SPRINGS, FL 34134

CLIENT:  
 **DISCOVERY DAY ACADEMY**

CONSULTANT:  
 **MORRIS DEPEUW**  
ENGINEERS • PLANNERS • SURVEYORS  
LANDSCAPE ARCHITECTS  
FL CA NO. 6532 / FL CERT NO. LB6891 / LC26000330

**Fort Myers**  
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**Tallahassee**  
113 South Monroe Street  
1st Floor  
Tallahassee, Florida 32301  
Toll free: 866-337-7341

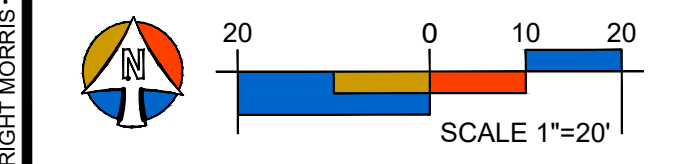
**Destin**  
5597 Highway 98  
Unit 201  
Santa Rosa Beach, Florida 32459  
Toll free: 866-337-7341

REVISIONS	DATE

PROJECT MANAGER: HMU  
DRAWING BY: TDM  
JURISDICTION: BONITA SPRINGS  
DATE: 4/22/2021

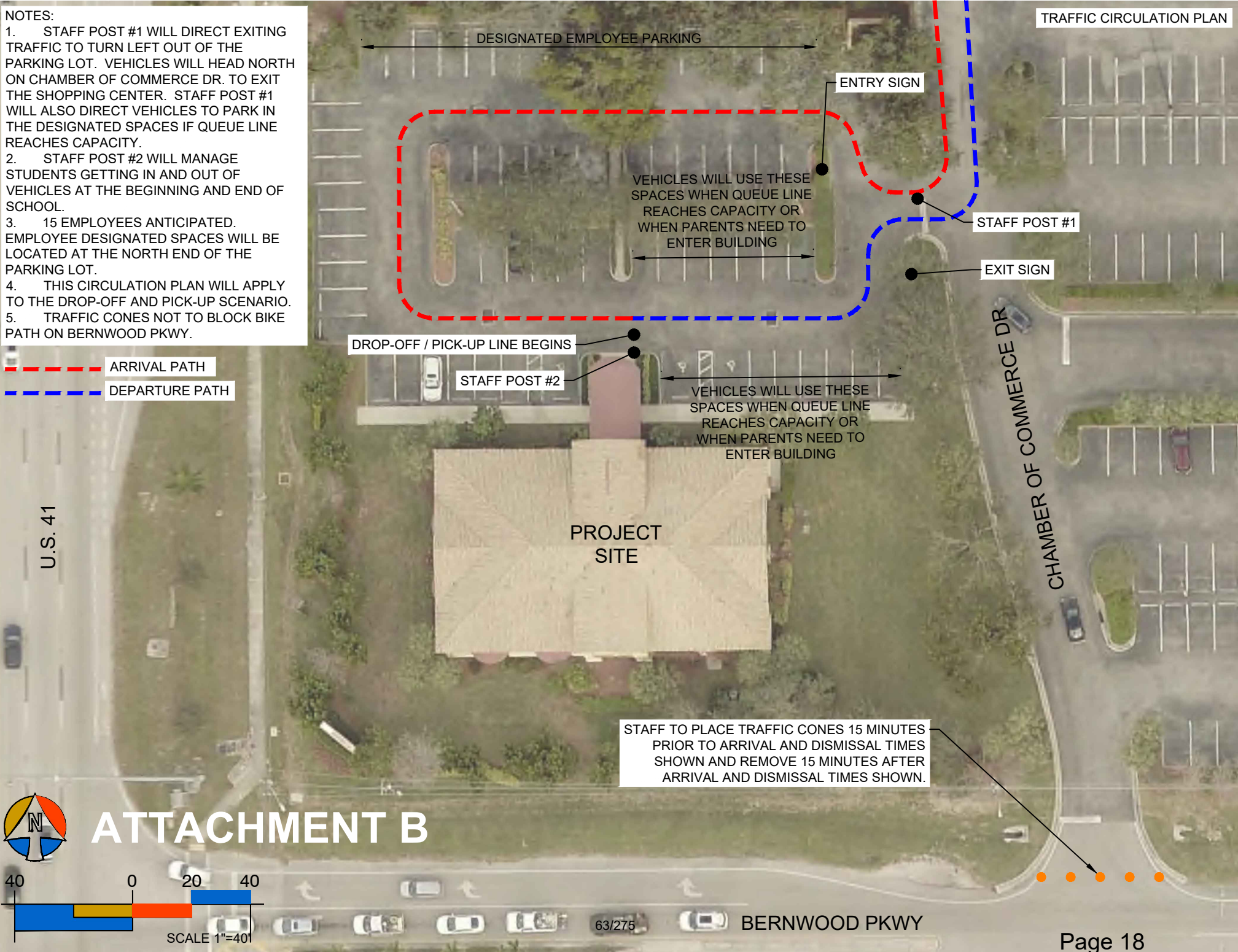
SHEET TITLE:  
**CONCEPTUAL SITE PLAN IV-G**

SHEET NUMBER: C-100



JOB/FILE NUMBER: 21010-00

- NOTES:**
1. STAFF POST #1 WILL DIRECT EXITING TRAFFIC TO TURN LEFT OUT OF THE PARKING LOT. VEHICLES WILL HEAD NORTH ON CHAMBER OF COMMERCE DR. TO EXIT THE SHOPPING CENTER. STAFF POST #1 WILL ALSO DIRECT VEHICLES TO PARK IN THE DESIGNATED SPACES IF QUEUE LINE REACHES CAPACITY.
  2. STAFF POST #2 WILL MANAGE STUDENTS GETTING IN AND OUT OF VEHICLES AT THE BEGINNING AND END OF SCHOOL.
  3. 15 EMPLOYEES ANTICIPATED. EMPLOYEE DESIGNATED SPACES WILL BE LOCATED AT THE NORTH END OF THE PARKING LOT.
  4. THIS CIRCULATION PLAN WILL APPLY TO THE DROP-OFF AND PICK-UP SCENARIO.
  5. TRAFFIC CONES NOT TO BLOCK BIKE PATH ON BERNWOOD PKWY.



# ATTACHMENT B



63/275

BERNWOOD PKWY

**ASSUMPTIONS:**

1. PER CORRESPONDENCE WITH FOUNDER OF DISCOVERY DAY ACADEMY, ELIZABETH BASART, THE FOLLOWING INFORMATION IS USED FOR THE PURPOSE OF THIS TRAFFIC ANALYSIS:
  - 1.1. THE DRIVE AISLES IN THE EXISTING PARKING LOT WILL SERVE AS A PARENT PICK UP / DROP OFF LINE
  - 1.2. EACH VEHICLE TAKES 30 SECONDS TO LOAD/UNLOAD STUDENTS
2. DIMENSIONS PER VEHICLE = 20'L X 6.5"W

- - - - - AVAILABLE STORAGE LENGTH (671')
- - - - - DEPARTURE PATH
- ▭ 20'L X 6.5"W VEHICLE (42 TOTAL)

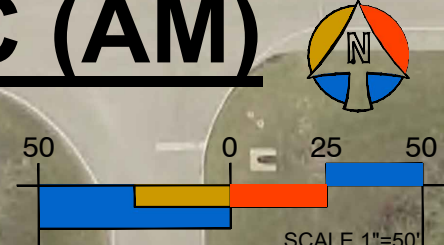
IF QUEUING LINE REACHES CAPACITY, STAFF WILL DIRECT VEHICLES TO UTILIZE THESE EXISTING PARKING SPACES

# ATTACHMENT C (AM)

**NOTES:**

1. THIS GRAPHIC REPRESENTS A WORST-CASE SCENARIO.
2. LONGEST VEHICLE QUEUE = 42 VEHICLES.
3. THE PARKING LOT CAN ACCOMMODATE 31 VEHICLES FOR STACKED QUEUING IN THE DRIVE AISLE.
4. THE REMAINING 11 VEHICLES WILL UTILIZE THE EXISTING PARKING SPACES SHOWN TO DROP OFF STUDENTS.

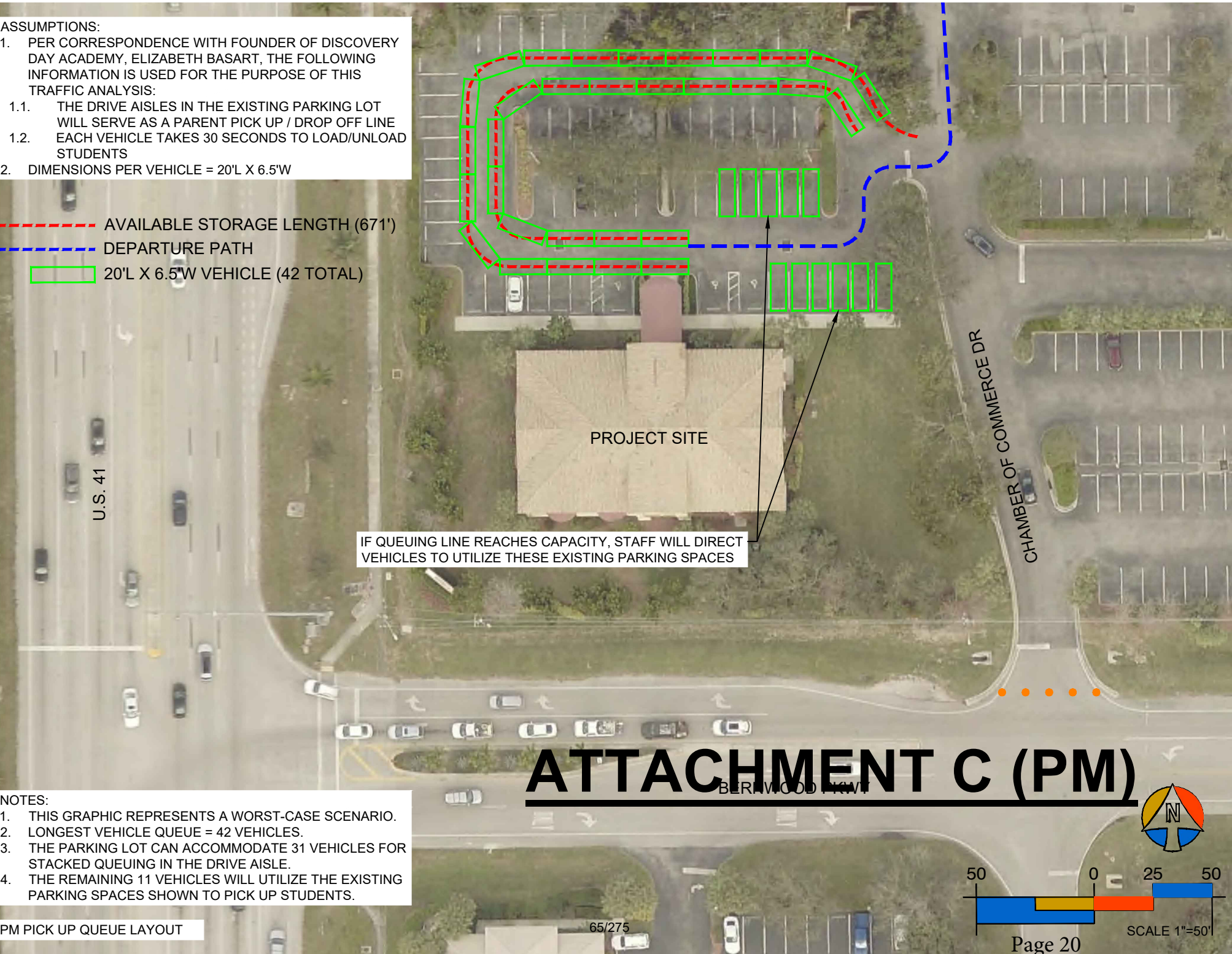
AM DROP OFF QUEUE LAYOUT



**ASSUMPTIONS:**

1. PER CORRESPONDENCE WITH FOUNDER OF DISCOVERY DAY ACADEMY, ELIZABETH BASART, THE FOLLOWING INFORMATION IS USED FOR THE PURPOSE OF THIS TRAFFIC ANALYSIS:
  - 1.1. THE DRIVE AISLES IN THE EXISTING PARKING LOT WILL SERVE AS A PARENT PICK UP / DROP OFF LINE
  - 1.2. EACH VEHICLE TAKES 30 SECONDS TO LOAD/UNLOAD STUDENTS
2. DIMENSIONS PER VEHICLE = 20'L X 6.5'W

-  AVAILABLE STORAGE LENGTH (671')
-  DEPARTURE PATH
-  20'L X 6.5'W VEHICLE (42 TOTAL)



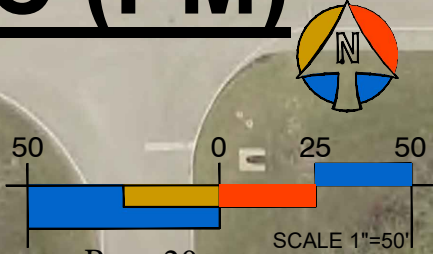
IF QUEUING LINE REACHES CAPACITY, STAFF WILL DIRECT VEHICLES TO UTILIZE THESE EXISTING PARKING SPACES

# ATTACHMENT C (PM)

**NOTES:**

1. THIS GRAPHIC REPRESENTS A WORST-CASE SCENARIO.
2. LONGEST VEHICLE QUEUE = 42 VEHICLES.
3. THE PARKING LOT CAN ACCOMMODATE 31 VEHICLES FOR STACKED QUEUING IN THE DRIVE AISLE.
4. THE REMAINING 11 VEHICLES WILL UTILIZE THE EXISTING PARKING SPACES SHOWN TO PICK UP STUDENTS.

PM PICK UP QUEUE LAYOUT



**REQUESTED MOTION:** Approve overhead to underground Relocation Agreement for West Terry Street Project with Comcast in the amount of \$288,847.60, converting poles to underground facilities along West Terry Street.

**REQUESTOR:** Matt Feeney, Assistant City Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** #5 Community Aesthetics

---

**BACKGROUND:** Attached is the Comcast Relocation Agreement for West Terry Street from Pine Avenue to Edenbridge Court, for converting Comcast poles to underground facilities on the north side of West Terry Street, along the recently completed multi-use pathway. The cost estimate is \$288,847.60.

**STAFF RECOMMENDATION:** Approve overhead to underground Relocation Agreement with Comcast

**ATTACHMENTS:**

1. Comcast Relocation Agreement
2. Resolution

---

**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: Matt Feeney

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

## RELOCATION AGREEMENT

This Agreement is between Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC, a Colorado limited liability company, with an address of 1701 John F. Kennedy Blvd, Philadelphia, PA 19103, and City of Bonita Springs ("City") a political subdivision of the State of Florida, with an address of 9101 Bonita Beach Road, Bonita Springs, FL 34135.

WHEREAS, the City has re-constructed West Terry Street for bicycle & pedestrian improvements (the "Project"), and is requiring the relocation and undergrounding of certain portions of Florida Power & Light ("FPL") transmission poles along West Terry Street; and

WHEREAS, the City as part of the Project, is also seeking Comcast to relocate and place underground all of its existing overhead cables, equipment, and service drops attached to FPL poles and located in the public rights of way along West Terry Street between Edenbridge Court and Pine Avenue; and

WHEREAS, Comcast will incur costs in the relocation of Comcast's existing facilities, which costs would not have occurred but for the City's Project; and

WHEREAS, Comcast estimates its costs for the relocation of its facilities to be \$288,847.60 ; and

WHEREAS, the City has agreed to reimburse Comcast for relocating its facilities and placing them underground.

NOW, THEREFORE, in consideration of the mutual promises of the City and Comcast and other good and valuable consideration, the parties agree that Comcast shall relocate and place underground the Comcast facilities, and the City shall reimburse Comcast for the cost of such relocation as follows:

1. Relocation and Undergrounding. In connection with the relocation and undergrounding, Comcast will relocate its facilities to the locations and as described or depicted on the attached construction drawings **Exhibit A** (the "Relocation and Undergrounding").
2. Compensation. Prior to Comcast commencing the Relocation and Undergrounding, the City shall pay Comcast \$288,847.60 for the Relocation and Undergrounding, as set forth below.
  - a. Advance Payment. The City shall reimburse Comcast the amount of \$288,847.60 for the Relocation and Undergrounding of the Comcast facilities in the form of an upfront payment (the "Upfront Payment"). The work to be performed by Comcast will be in accordance with the construction drawings attached hereto as **Exhibit A**
  - b. Termination. In the event that this Agreement is terminated due to the cancellation or indefinite suspension of work by the City, the City shall be

**RELOCATION AGREEMENT**

Page 1 of 2

responsible for the costs of Relocation and Undergrounding already incurred, including but not limited to all engineering, design, equipment and materials cost, and labor costs before a refund is provided. Nothing in this section shall be construed or abrogate Comcast's legal duty to mitigate damages.

3. Performance. Subject to the conditions set forth in this Agreement, upon Comcast's receipt of the Upfront Payment, Comcast shall coordinate with the City to commence the Relocation and Undergrounding. Materials and construction shall meet Comcast's Construction Standards. All work involved in the Relocation and Undergrounding shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality and in compliance with applicable construction requirements, laws, codes and regulations.


4. Effective Date. This Agreement shall become effective upon execution by the parties and shall continue in effect until the completion of the Relocation and Undergrounding unless otherwise provided herein or earlier termination of this Agreement in accordance with this Agreement.

5. Modifications and Merger. Any modifications or amendments to this Agreement and any waiver of any provision hereto shall not be valid unless set forth in writing and signed by the City and Comcast. This Agreement and exhibits attached hereto constitute the whole agreement between the parties and shall supersede all previous communications, representations, letters, agreements, either oral or written, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, Comcast and the City have executed this Agreement, effective as of the date of the last signature indicated below.

Comcast of Colorado/Florida/Michigan/  
New Mexico/Pennsylvania/Washington, LLC

City of Bonita Springs

  
By: \_\_\_\_\_  
Patrick O'Hare

By: \_\_\_\_\_

Its: RVP Engineering

Its: \_\_\_\_\_

Dated: 6/14/21

Dated: \_\_\_\_\_

**RELOCATION AGREEMENT**

Page 2 of 2

W TERRY ST PATHWAY

WB ID#: JB00002975 CIFA XREF: N/A



Project Name: N/A  
Address: W TERRY ST PATHWAY BONITA SPRINGS FL,  
County: LEE  
Node #: FLNABS031  
Type: RELOCATION-SDU  
Contact Name: N/A  
Phone #: N/A  
Date: SEPT 14TH 2020

# of Units: 1  
Node Specs: NAP750  
Plant Ext. Specs: NAP750

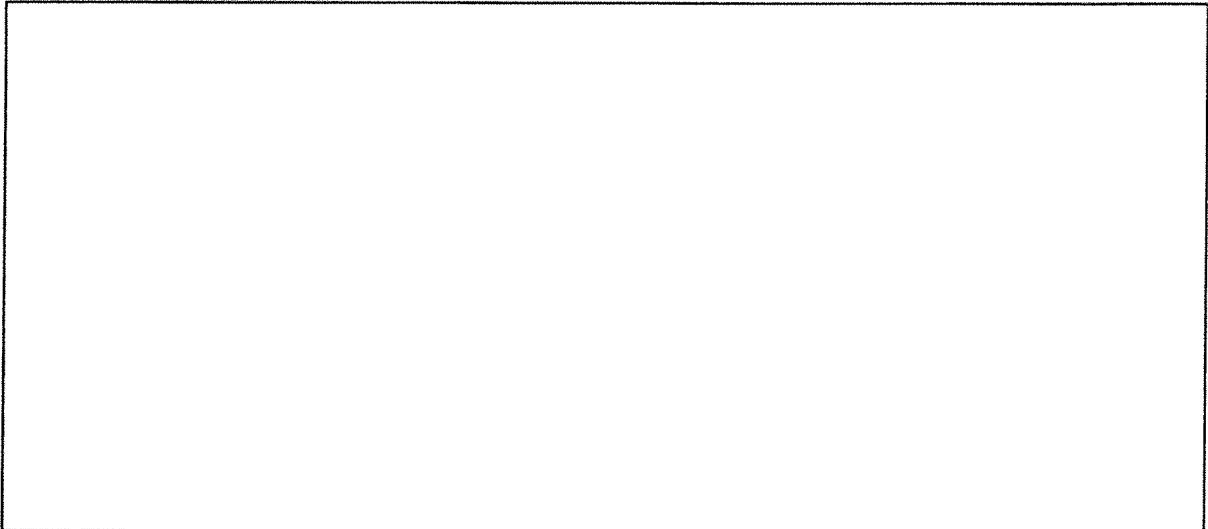
**BOM:**

New Actives:	0
New Taps:	0
Cable Type:	P3.875-.625
Buried Cable (Trench):	20112
Buried Cable (Conduit):	0
Riser Cable:	0
Aerial Cable (New Strand):	0
Aerial Cable (Overlash):	0
Messenger Cable:	0
Clipped Cable:	0
<b>Total Cable:</b>	<b>20112</b>

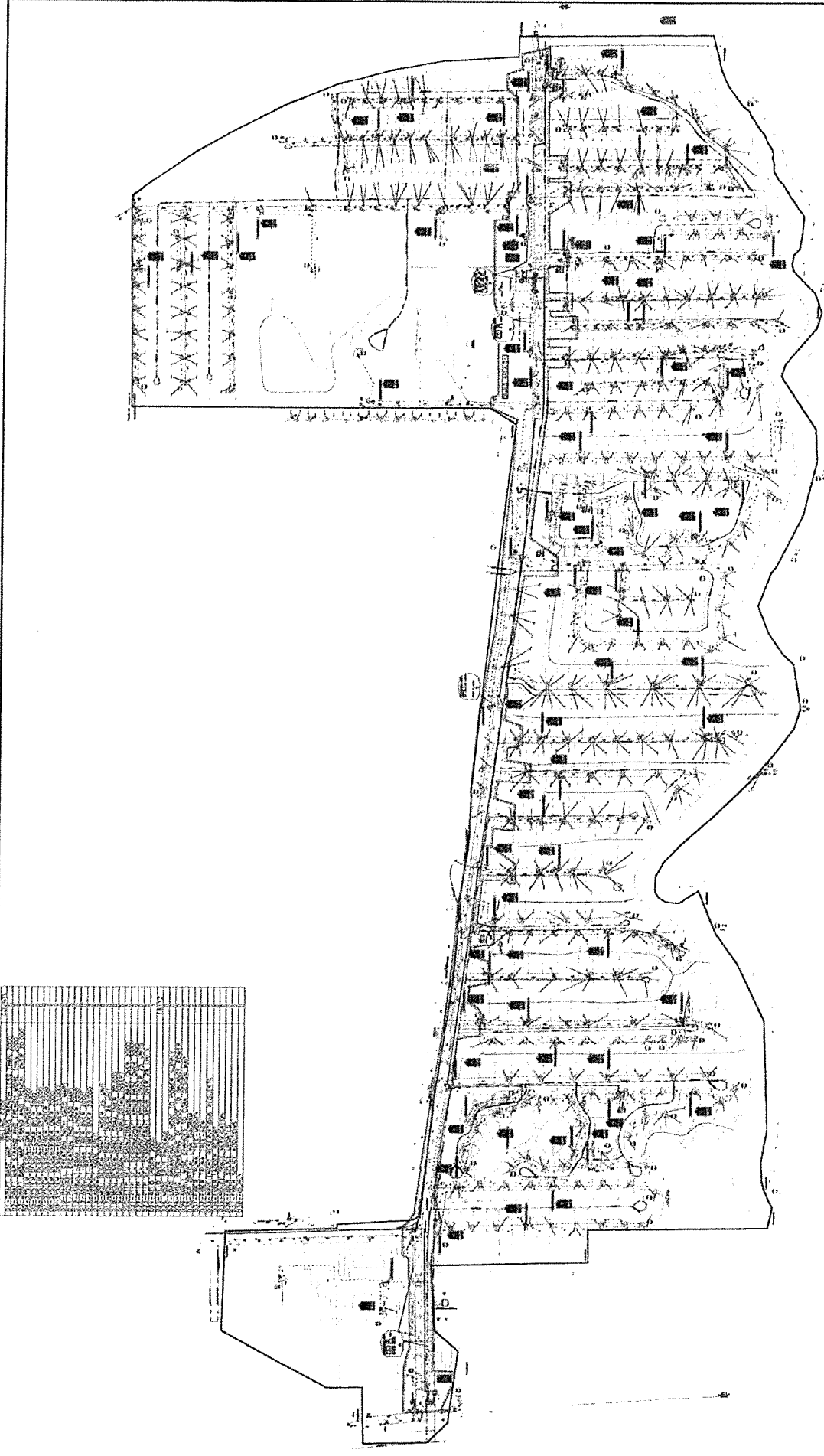
**COMMENTS:**

CONSTRUCTION JOB ID: JB0000297571

**LOCATION MAP:**

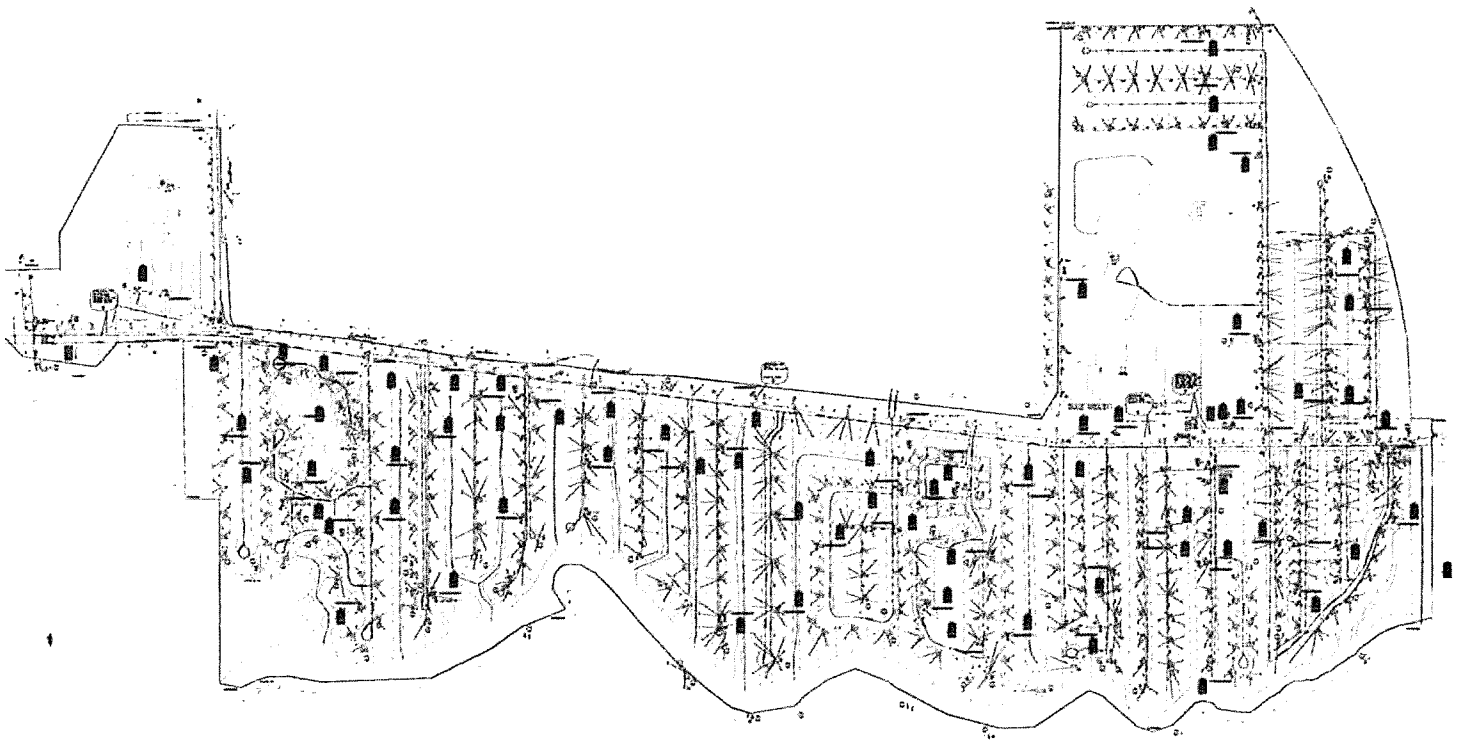


**Eng**  
**CONFIDENTIAL**



Dwg. Title:  
 B017 / FLVBS03  
 W. TERRY ST. PATHWAY  
 BONITA SPRINGS, FL

Rev.	Date	Description	Rev.	Date	Description
1	09/14/2020	W. TERRY ST. PATHWAY			
2		DESIGNER/DRAFTER - DSE			
		PROJECT NO. 2000029757			
		FL-SWFL-W. TERRY ST. PATHWAY - FIELD-DSE			



W TERRY ST PATHWAY

WB ID#: JB00002975 CIFA XREF: N/A



Project Name: N/A  
Address: W TERRY ST PATHWAY BONITA SPRINGS FL,  
County: LEE  
Node #: FLNABS031  
Type: RELOCATION-SDU  
Contact Name: N/A  
Phone #: N/A  
Date: SEPT 14TH 2020

# of Units: 1  
Node Specs: NAP750  
Plant Ext. Specs: NAP750

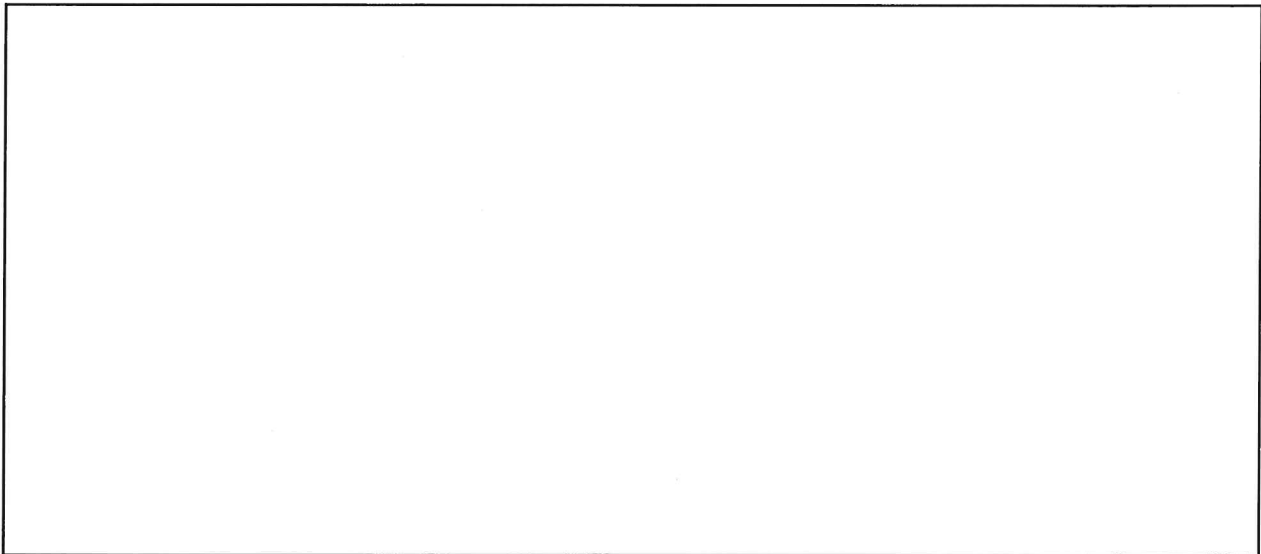
BOM:

New Actives:	0
New Taps:	0
Cable Type:	P3.875-.625
Buried Cable (Trench):	20112
Buried Cable (Conduit):	0
Riser Cable:	0
Aerial Cable (New Strand):	0
Aerial Cable (Overlash):	0
Messenger Cable:	0
Clipped Cable:	0
<b>Total Cable:</b>	<b>20112</b>

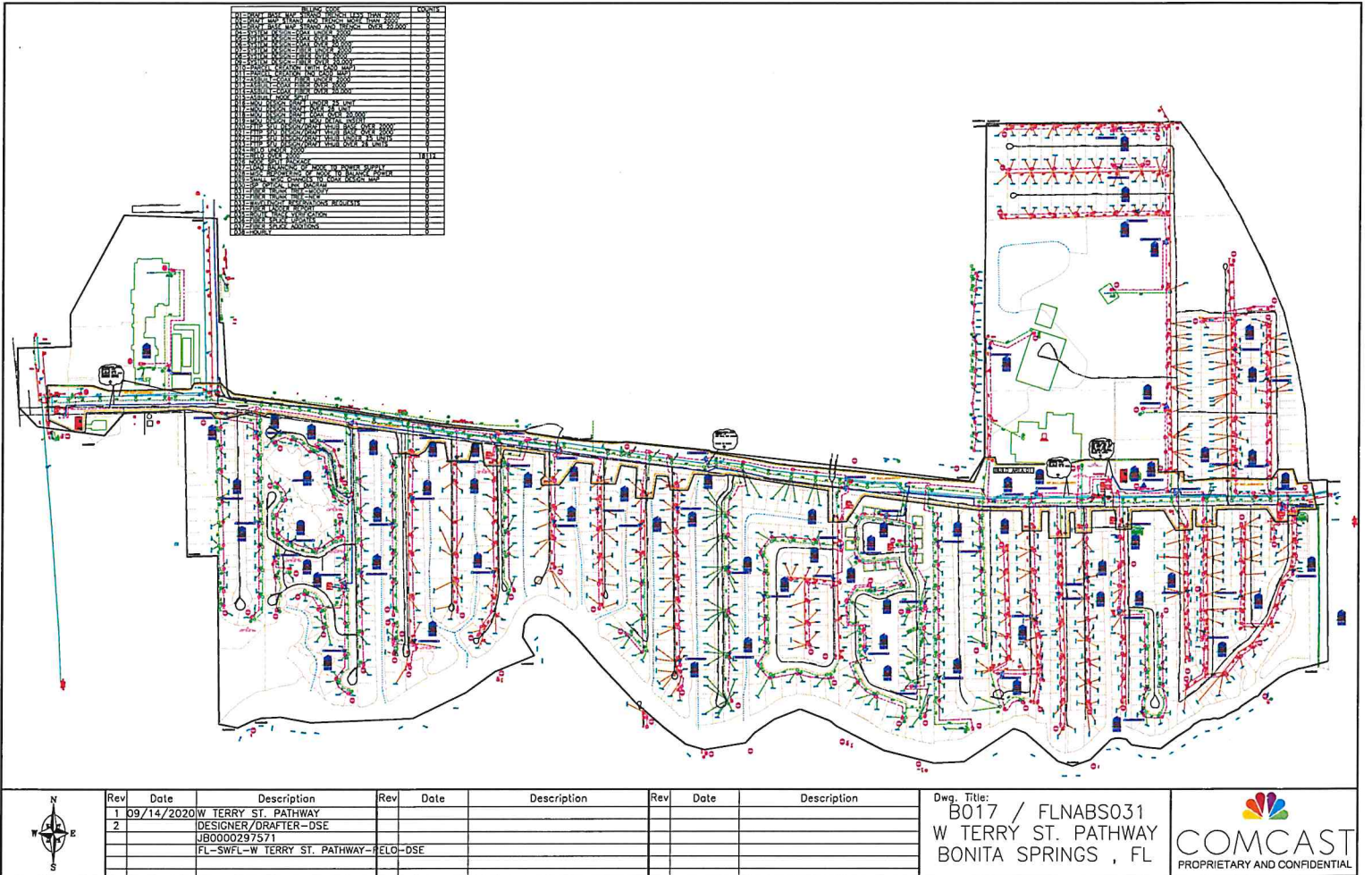
COMMENTS:

CONSTRUCTION JOB ID: JB0000297571

LOCATION MAP:



**Eng**  
**CONFIDENTIAL**



Symbol	Description
1	1000 OM3
2	1000 OM4
3	1000 OM5
4	1000 OM6
5	1000 OM7
6	1000 OM8
7	1000 OM9
8	1000 OM10
9	1000 OM11
10	1000 OM12
11	1000 OM13
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95	1000 OM97
96	1000 OM98
97	1000 OM99
98	1000 OM100

Rev	Date	Description	Rev	Date	Description	Rev	Date	Description
1	09/14/2020	W TERRY ST. PATHWAY						
2		DESIGNER/DRAFTER-DSE						
		JB0000297571						
		FL-SWFL-W TERRY ST. PATHWAY-RELO-DSE						

Dwg. Title:  
 B017 / FLNABS031  
 W TERRY ST. PATHWAY  
 BONITA SPRINGS , FL





CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPROVING AN AGREEMENT BETWEEN COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC, AND THE CITY OF BONITA SPRINGS, FOR THE CONVERSION OF POLES TO UNDERGROUND FACILITIES ALONG WEST TERY STREET IN THE NTE AMOUNT OF \$288,847.60; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has reconstructed West Terry Street for bicycle and pedestrian improvements, and is requiring the relocation and undergrounding of certain portions of Florida Power & Light (FPL) transmission poles along West Terry Street; and

WHEREAS, the City as part of the project, is also seeking Comcast to relocate and place underground all of its existing overhead cables, equipment, and service drops attached to FPL poles and located in the public rights-of-way along West Terry Street between Edenbridge Court and Pine Avenue; and

WHEREAS, Comcast will incur costs in the relocation of Comcast's existing facilities which costs would not have occurred but for the City's project; and

WHEREAS, Comcast estimates its costs for the relocation of its facilities to be \$288,847.60; and

WHEREAS, the City has agreed to reimburse Comcast for relocating its facilities and placing them underground.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Florida:

1. Relocation and Undergrounding. In connection with the relocation and undergrounding, Comcast will relocate its facilities to the locations and as described or depicted on the drawings attached as "A" to the Agreement BSC-\_\_\_\_\_.
2. Compensation. Prior to Comcast commencing the Relocation and Undergrounding, the City shall pay Comcast \$288,847.60 for the Relocation and Undergrounding.
3. Peformance. Subject to the conditions as set forth in said Agreement, upon Comcast's receipt of the upfront payment, Comcast shall coordinate with the City to commence the Relocation and Undergrounding.



**REQUESTED MOTION:** Re-approve contract amendment #1 between the City and the Florida Department of Economic Opportunity (FDEO) for the Community Development Block Grant – Disaster Recovery (CDBG-DR) IBE/Quinn/Downs/Dean West of Imperial Parkway Drainage Project – Contract Agreement #IR015

**REQUESTOR:** Matt Feeney, Assistant City Manager; Elly Soto McKuen, Senior Project Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** 1) Improve Stormwater Management, 3) Strengthen/Enhance City Finances, 4) Environmental Protection, 7) Government Transparency

---

**BACKGROUND:** The City received U.S. Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funding for the Imperial Bonita Estates/Quinn/Downs/Dean West of Imperial Parkway Drainage Program. City Council approved the \$11,021,919 agreement on June 17, 2020, with a fully executed agreement received from FDEO on July 8, 2020.

FDEO contacted the City to advise they would be amending the agreement to reflect a new FDEO contact person and other policy and program requirements including budget development and revised activity work plans.

City Council approved Amendment #1 on May 19, 2021. The executed amendment was sent to FDEO for final signature. During that time FDEO contacted staff to advise that the format of the amendment was being amended and the City would have to execute the agreement again. The contents of the amendment are the same.

**STAFF RECOMMENDATION:** Re-approve contract amendment #1 between the City and the Florida Department of Economic Opportunity (FDEO) for the Community Development Block Grant – Disaster Recovery (CDBG-DR) IBE/Quinn/Downs/Dean West of Imperial Parkway Stormwater Improvement Project – Contract Agreement #IR015

**ATTACHMENTS:**

1. Revised Amendment #1 – FDEO Contract #IR015
2. Original Agreement dated July 8, 2020

---

**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: Matt Feeney

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

**AMENDMENT ONE  
TO SUBRECIPIENT AGREEMENT BETWEEN  
THE DEPARTMENT OF ECONOMIC OPPORTUNITY  
AND  
CITY OF BONITA SPRINGS**

On or about July 8, 2020, the State of Florida, Department of Economic Opportunity (“DEO”) and City of Bonita Springs, (“Subrecipient”), entered into Agreement Number IR015 for Infrastructure Program activities under the United States Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) program). DEO and the City of Bonita Springs may individually be referred to herein as a “Party” or collectively as the “Parties”.

WHEREAS, Section (4) of the Agreement provides that any modifications to the agreement shall be in writing executed by the Parties thereto; and

WHEREAS, the Parties wish to amend the agreement as set forth herein;

NOW THEREFORE, the Parties hereby agree to the following:

1. All references throughout the agreement to the Office of Disaster Recovery are hereby amended to mean Office of Long-Term Resiliency.

2. Section (3) **Period of Agreement**, is hereby amended to read:

(3) **Period of Agreement.** This Agreement begins upon execution by both Parties (the “Effective Date”) and ends thirty-six (36) months after execution by DEO, unless otherwise terminated as provided in this Agreement. DEO shall not grant any extension of this Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion and DEO’s Director of the Division of Community Development approves such extension.

3. Section (16) **Notice and Contact**, (b) is hereby amended to read:

(b) The name and address of DEO’s Grant Manager for this Agreement is:

Samuel Long  
107 E. Madison Street  
Tallahassee, FL 32399  
Office: 850-921-3279  
Samuel.Long@deo.myflorida.com

4. Section (19) **Attachments**, (b) is hereby amended to read:

(b) This Agreement contains the following attachments:  
Attachment A – Project Description and Deliverables  
Attachment B – Project Budget (Example)  
Attachment C – Activity Work Plan (Example)  
Attachment D – Program and Special Conditions  
Attachment E – State and Federal Statutes, Regulations and Policies  
Attachment F – Civil Rights Compliance  
Attachment G – Reports  
Attachment H – Warranties and Representations  
Attachment I – Audit Requirements  
Exhibit 1 to Attachment I – Funding Sources  
Attachment J – Audit Compliance Certification

Attachment K – SERA Access Authorization Form  
 Attachment L – 2 CFR Appendix II to Part 200  
 Attachment M – Subrogation Agreement

5. Section (27) **Employment Eligibility Verification** is hereby amended to read:

- A. Section 448.095, F.S., requires the following:
- (1) Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
  - (2) A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.
- B. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
- C. If Contractor does not use E-Verify, Contractor shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

6. Attachment A, Section 1, **Project Description**, last paragraph is hereby amended to read:

Subrecipient was awarded \$11,021,919 of CDBG-DR funds to repair the stormwater drainage system that experienced extensive flooding during Hurricane Irma. The stormwater drainage system project includes the acquisition of parcels of land in the Imperial Bonita Estates/Quinn/Downs/Dean Street West of Imperial Parkway Drainage Area to be converted to dry detention and storage ponds. Additionally, the City will install backflow preventers at critical locations in the various neighborhoods, construct storm sewers to channel water through various points in the neighborhoods to the Imperial River expanding the storm sewer network to help the area drain more efficiently and install portable stormwater pumps that will support the detention areas. In addition to the CDBG-DR funding, the City of Bonita Springs has received a state grant from the Department of Environmental Protection in the amount of \$750,000 to assist with the funding of the development of design plans necessary to construct and install the storm sewers and flood water storage areas of the project.

7. Attachment A, Section 2, **Subrecipient Responsibilities**, B through E are hereby deleted in their entirety and amended to read:

**B. Program Design and Implementation**

Subrecipient will conduct the program design and implementation services necessary to support the repair of the stormwater drainage system project.

Tasks and activities that are eligible for reimbursement under the CDBG-DR Program Design and Implementation deliverable are as follows:

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1. Complete procurement of vendors for internal grants management and compliance and direct program and project production, completion of this task is satisfied when the City of Bonita Springs and vendor executes a contract.
2. Establish and administer financial management system in a manner that complies with all applicable HUD CDBG-DR and DEO rules.
3. Establish and administer quality assurance and quality control system in a manner that complies with all applicable HUD CDBG-DR and DEO rules.
4. Establish and administer public information and communications program.
5. Establish and administer production and grants management reporting system.
6. Provide ongoing program administration, policy, grants and financial management services to support the City of Bonita Springs stormwater drainage system project.

**C. Engineering Services:**

Subrecipient will perform Engineering services necessary to implement the overall repair of the stormwater drainage system project.

Tasks and activities that are eligible for reimbursement under the Engineering Services deliverable are as follow:

1. Prepare Engineering Designs for each phase of the project
2. Prepare As Built Plans
3. Prepare permit applications required by the Department of Environmental Protection and the South Florida Water Management District;
4. Conduct inspections for each phase of the project as required
5. Conduct final inspections of all completed construction projects.
6. Inspect construction activities for consistency with plans and specifications;
7. Certify by a licensed professional, using AIA forms G702 and G703, or their substantive equivalents, that the project, or a quantifiable portion of the project, is complete.

**D. Acquisition Services:**

Subrecipient will acquire parcel(s) of land, that will support the need for detention areas in the area. The parcels and amount of land will be determined as the design plans are developed. The purchase price must be consistent with applicable uniform cost principles and the buyout program, if applicable. Prior to acquiring the property, the subrecipient must submit all documentation for review and approval as outlined in Attachment D, number 6, listed in this contract. Subrecipient must develop as well as demolish property as consistent with the CDBG-DR guidelines.

Tasks and activities that are eligible for reimbursement under the Acquisition Services deliverable are as follow:

1. Prepare a property appraisal for each parcel of land
2. Prepare site specific Environmental reviews
3. Conduct Title searches for each parcel of land
4. Work with property owner to negotiate the sale of each parcel of land
5. Prepare documents for the closing on the sale of each parcel of land
6. Conduct the purchase of each parcel of land and transfer ownership to the City

**E. Construction Services:** Installation of stormwater infrastructure at critical locations in various locations in the neighborhoods. In addition, construction of a series of storm sewers to channel water through various points in the neighborhoods to the Imperial River, expanding the storm sewer network to help the area drain more efficiently. Increase the storage locations in the existing area. Stormwater pumps will be installed to support the detention areas.

Tasks and activities that are eligible for reimbursement under the Construction Services deliverable are as follows:

1. Develop and submit bidding documents for all construction projects

2. Attend pre-bid/pre-construction conference;
3. Review submittal of all construction bid proposals and create bid tabulations
4. Award construction contract(s) through the approval of the City Counsel
5. Complete all construction activities as outlined in the executed construction contract
6. Prepare any needed construction change orders to the contract;
7. Review all construction invoices and certify costs prior to submittal for reimbursement
8. Prepare audits and all required documentation for project closeout

8. Attachment A, Section 3., **Deliverables** is hereby deleted in its entirety and replaced with the following:

**3. DELIVERABLES**

Grantee agrees to provide the following services as specified:

<b>Deliverable No. 1 – Program Design and Implementation</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall complete eligible project implementation tasks as detailed in Section 2B Subrecipient Responsibilities of this Scope of Work  Total Deliverable 1 cost reimbursement not to exceed: \$425,000	Subrecipient may request reimbursement upon completion of a minimum of one project implementation task on a per completed task basis as detailed in 2.B. evidenced by submittal of the invoice package as outlined in Section 4.A. below.	Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.
<b>Deliverable 1 - \$425,000.00</b>		
<b>Deliverable No. 2 – Engineering Services</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall complete eligible project implementation tasks as detailed in Section 2C Subrecipient Responsibilities of this Scope of Work  Total Deliverable 2 cost reimbursement not to exceed: \$1,346,919	Subrecipient may request reimbursement upon completion of a minimum of one project engineering service tasks listed in 2.C. evidenced by submittal of the invoice package as outlined in Section 4.A. below.	Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.
<b>Deliverable 2 - \$1,346,919.00</b>		
<b>Deliverable No. 3 – Acquisition Services</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall acquire property and perform acquisition related activities outlined in Section 2D Subrecipient Responsibilities of this Scope of Work	Subrecipient may request reimbursement upon completion of a minimum of one project acquisition	Failure to complete the minimum performance measures as specified shall result in non-payment for this

<p>Total Deliverable 3 cost reimbursement not to exceed \$3,650,000</p>	<p>service tasks listed in 2.D., evidenced by submittal of the invoice package as outlined in Section 4.A. below as well as the following:</p> <ul style="list-style-type: none"> <li>• A completed Property Acquisition Report, identifying address of the parcel acquired, its identification number, and the type and amount of eligible expenses incurred related to the acquisition of that parcel.</li> <li>• A completed appraisal.</li> <li>• A completed review appraisal.</li> <li>• A copy of the warranty deed.</li> <li>• A copy of the settlement statement.</li> </ul>	<p>deliverable for each payment request.</p>
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**Deliverable 3 - \$3,650,000.00**

**Deliverable No. 4 – Construction Services**

<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
<p>The Subrecipient shall complete infrastructure construction as detailed in Section 2E Subrecipient Responsibilities of this Scope of Work</p> <p>Total Deliverable 4 cost reimbursement not to exceed \$5,600,000.</p>	<p>Subrecipient shall start being reimbursed upon completion of a minimum of 10% of construction services as detailed in Section 2.E. As evidence of percent completed, the Subrecipient shall provide AIA forms G702/G703 or similar DEO-approved industry-standard forms, signed by the contractor and certified by the engineer performing inspection services for the project, documenting the costs for which reimbursement is being</p>	<p>Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.</p>

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	requested, and noting overall percent completion of the project.	
		<b>Deliverable 4 - \$5,600,000.00</b>
		<b>Total Cost \$ 11,021,919.00</b>

9. Attachment B, **Project Budget** is hereby deleted in its entirety and replaced with the following:

## Attachment B – Project Budget (Example)

Subrecipient: \_\_\_\_\_ Contract Number: \_\_\_\_\_ Modification Number: \_\_\_\_\_

Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-DR Amount	Other Funds	Source*	Total Funds
<b>1. Housing Program - Homeowner Service Project (Example Activities)</b>													
	Home Repair												
	Reconstruction												
	Replacement of Manufactured Homes												
	Temporary Rental and Mortgage Assistance												
	Buyout / Acquisition for Redevelopment												
<b>2. Housing Program - Supportive Housing Initiative PUD Rental Housing Project (Example Activities)</b>													
<b>3. Public Facilities Program – Unified Service Center (Example Activities)</b>													
<b>4. Infrastructure Program (Example Activities)</b>													
	Armstrong Drainage Project												
	Hastings Phase I Sewer												
	Hastings Phase II Sewer												
	Oyster Creek Basin												

	Improvements													
	Orange Street Drainage													
	Avenue D Drainage													
	St. Augustine - Lake Maria Sanchez HMGP Match Drainage													
	St. Augustine Blvd & Cypress Rd Drainage													
5.	<b>Administration</b>													
6.	<b>Planning</b>													
	<b>Totals:</b>													

\*Show the sources and amounts of Other Funds needed to complete the project below, including local funds, grants from other agencies and program income.

	<b>Source of Other Funds</b>	<b>Amount</b>
1.		
2.		
3.		
4.		

10. Attachment C, Activity Work Plan is hereby deleted in its entirety and replaced with the following:



**IN WITNESS THEREOF**, by signature below, the Parties agree to abide by the terms, conditions, and provisions of Agreement Number IR015 as amended. This Amendment is effective the date the last Party signs this Amendment.

<b>CITY OF BONITA SPRINGS</b>	<b>DEPARTMENT OF ECONOMIC OPPORTUNITY</b>
SIGNED:	SIGNED:
<b>RICK STEINMEYER</b>	<b>DANE EAGLE</b>
<b>MAYOR</b>	<b>SECRETARY</b>
DATE:	DATE:

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

**OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

**By:** \_\_\_\_\_

**Approved Date:** \_\_\_\_\_

**State of Florida**  
**Department of Economic Opportunity**  
**Federally-Funded**  
**Community Development Block Grant**  
**Disaster Recovery (CDBG-DR) Infrastructure Repair Program**  
**Subrecipient Agreement**

JJ

THIS AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, (hereinafter referred to as "DEO") and City of Bonita Springs, hereinafter referred to as the "Subrecipient" (each individually a "Party" and collectively "the Parties").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

**WHEREAS**, pursuant to Public Law (P.L.) P.L. 115-123 Bipartisan Budget Act of 2018, P.L. 115-56, the "Continuing Appropriations Act, 2018" and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 ,, and the "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant - Disaster Recovery Grantees", 83 Federal Register No. 28 (February 9, 2018) ,83 Federal Register No. 157 (August 14, 2018); (hereinafter collectively referred to as the "Federal Register Guidance"), the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") has awarded Community Development Block Grant - Disaster Recovery (CDBG-DR) funds to DEO for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the State of Florida Action Plan for Disaster Recovery 2018 (hereinafter referred to as the "Action Plan").

**WHEREAS**, CDBG-DR funds made available for use by the Subrecipient under this Agreement constitute a subaward of DEO's Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of DEO's Federal award.

**WHEREAS**, the Subrecipient has legal authority to enter into this Agreement and by signing this Agreement, the Subrecipient represents and warrants to DEO that it will comply with all the requirements of the subaward described herein.

**WHEREAS**, the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income persons in a manner that ensures at least 70 percent of the grant amount awarded under this Agreement is expended for activities that benefit such persons.

**NOW THEREFORE**, DEO and the Subrecipient agree to the following:

**(1) Scope of Work.** The Scope of Work for this Agreement includes Attachment A, Scope of Work. With respect to Attachment B, Project Budget, and Attachment C, Activity Work Plan, the Subrecipient shall submit to DEO such Attachments in conformity with the current examples attached hereto as necessary and

appropriate. Provided further, if there is a disagreement between the Parties, with respect to the formatting and contents of such attachments, then DEO's decisions with respect to same shall prevail, at DEO's sole and absolute discretion.

**(2) Incorporation of Laws, Rules, Regulations and Policies.** The Subrecipient agrees to abide by all applicable State and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570 and the State's Action Plan.

**(3) Period of Agreement.** This Agreement begins upon execution by both Parties (the "Effective Date") and ends twenty-four (24) months after execution by DEO, unless otherwise terminated as provided in this Agreement. DEO shall not grant any extension of this Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion and DEO's Director of the Division of Community Development approves such extension.

**(4) Modification of Agreement.** Modifications to this Agreement shall be valid only when executed in writing by the Parties. Any modification request by the Subrecipient constitutes a request to negotiate the terms of this Agreement. DEO may accept or reject any proposed modification based on DEO's sole determination and absolute discretion, that any such acceptance or rejection is in the State's best interest.

**(5) Records.**

(a) The Subrecipient's performance under this Agreement shall be subject to 2 C.F.R. part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

(b) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and representatives of the Federal government and their duly authorized representatives shall have access to any of the Subrecipient's books, documents, papers and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) The Subrecipient shall maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) The Subrecipient will provide to DEO all necessary and appropriate financial and compliance audits in accordance with Paragraph (6), Audit Requirements and Attachments J and K herein and ensure that all related party transactions are disclosed to the auditor.

(e) The Subrecipient shall retain sufficient records to show its compliance with the terms of this Agreement and the compliance of all subrecipients, contractors, subcontractors and consultants paid from funds under this Agreement for a period of six (6) years from the date DEO issues the final closeout for this award. The Subrecipient shall also comply with the provisions of 24 CFR 570.502(a)(7)(ii). The Subrecipient shall further ensure that audit working papers are available upon request for a period of six (6) years from the date DEO issues the final closeout of this Agreement, unless extended in writing by DEO. The six-year period may be extended for the following reasons:

1. Litigation, claim or audit initiated before the six-year period expires or extends beyond the six-year period, in which case the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for six (6) years after final disposition.

3. Records relating to real property acquired shall be retained for six (6) years after the closing on the transfer of title.

(f) The Subrecipient shall maintain all records and supporting documentation for the Subrecipient and for all contractors, subcontractors and consultants paid from funds provided under this Agreement, including documentation of all program costs in a form sufficient to determine compliance with the requirements and objectives of the scope of work and all other applicable laws and regulations.

(g) The Subrecipient shall either (i) maintain all funds provided under this Agreement in a separate bank account or (ii) ensure that the Subrecipient's accounting system shall have sufficient internal controls to separately track the expenditure of all funds from this Agreement. Provided further, that the only option available for advanced funds is to maintain such advanced funds in a separate bank account. There shall be no commingling of funds provided under this Agreement with any other funds, projects or programs. DEO may, in its sole discretion, disallow costs made with commingled funds and require reimbursement for such costs as described herein, Subparagraph (21)(e), Repayments.

(h) The Subrecipient, including all of its employees or agents, contractors, subcontractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the Federal government or their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

**(6) Audit Requirements**

(a) The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 C.F.R. part 200 if it expends seven hundred fifty thousand dollars (\$750,000) or more in Federal awards from all sources during its fiscal year.

(b) Within sixty (60) calendar days of the close of DEO's fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com), and DEO's grant manager; a blank version of which is attached hereto as Attachment K. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Subrecipient.

(c) In addition to the submission requirements listed in Attachment I, Audit Requirements, the Subrecipient shall send an electronic copy of its audit report to DEO's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open CDBG-DR subgrant.

(d) Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 C.F.R. 200.512, when such provisions are applicable to this Agreement.

**(7) Reports.** The Subrecipient shall provide DEO with all reports and information set forth in Attachment G, Reports. The monthly reports and administrative closeout reports must include the current status and progress of the Subrecipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement. Upon request by DEO, the Subrecipient shall provide additional program updates or information. If all required reports and copies are not sent to DEO or are not completed in a manner acceptable to DEO, payments may be withheld until the reports are properly completed. DEO may also take other action as stated in Paragraph (12) Remedies or otherwise allowable by law.

**(8) Inspections and Monitoring**

(a) The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 C.F.R. part 200.

(b) The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this agreement.

(c) This review must include: (1) reviewing financial and performance reports required by DEO, (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO as detected through audits, on-site reviews and other means and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 C.F.R. §200.521.

(d) Corrective Actions: DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the pass-through entity as detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, Grantee may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

**(9) 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 of 1974 (42 U.S.C. 5155 *et seq.*) and described in Appropriations Acts. The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by the Federal Register Guidance. The Subrecipient shall carry out the activities under this Agreement in compliance with DEO's procedures to prevent duplication of benefits. Subrecipient shall sign a Subrogation Agreement (See Attachment M).

**(10) Liability.**

(a) If the Subrecipient is a state agency or subdivision, as defined in Section 768.28(2), F.S., pursuant to Section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) The Subrecipient further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, Florida Statutes. The subrecipient shall hold DEO harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the Subrecipient to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(c) If the Subrecipient is a state agency or subdivision, as defined in Section 768.28, F.S., then the Subrecipient agrees to be fully responsible for its negligent or tortious acts or omissions, which result in claims or suits against DEO. The subrecipient agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. 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 agreement, contract or subcontract.

(d) Nothing herein is intended to serve as a waiver of sovereign immunity by DEO or the Subrecipient.

**(11) Events of Default.** If any of the following events occur ("Events of Default"), DEO may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in Paragraph (12) Remedies or pursue any remedy at law or in equity, without limitation:

(a) Any warranty or representation is made by the Subrecipient, in this Agreement or any previous agreement with DEO, is or becomes false or misleading in any respect, or if the Subrecipient fails to keep

or perform any of the obligations, terms, or covenants in this Agreement or any previous agreement with DEO, and/or has not cured them in timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

(b) Any material adverse change occurs in the financial condition of the Subrecipient at any time during the term of this Agreement and the Subrecipient fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by DEO;

(c) The Subrecipient fails to submit any required report or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by DEO;

(d) The Subrecipient fails to perform or timely complete any of its obligations under this Agreement, including participating in DEO's Implementation Workshop.

The Parties agree that in the event DEO elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise any remedies allowable herein or at law and without becoming liable to make any further payment.

(e) Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents 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 Party's control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay the Subrecipient believes is excusable under this paragraph, Subrecipient shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Subrecipient could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Subrecipient of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against DEO. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from DEO 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, Subrecipient shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Subrecipient, provided that Subrecipient grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Subrecipient 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.

**(12) Remedies.** If an Event of Default occurs, DEO shall provide thirty (30) calendar days written notice to the Subrecipient and if the Subrecipient fails to cure within those thirty (30) calendar days DEO may choose to exercise one or more of the following remedies, either concurrently or consecutively:

- (a) Terminate this Agreement upon twenty-four (24) hour written notice by DEO sent in conformity with Paragraph (16) Notice and Contact;
- (b) Begin any appropriate legal or equitable action to enforce performance of this Agreement;
- (c) Withhold or suspend payment of all or any part of a request for payment;
- (d) Demand that the Subrecipient return to DEO any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
- (e) Exercise any corrective or remedial actions, including but not limited to:
  - 1. Requesting additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance;
  - 2. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
  - 3. Advising the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question.

Pursuit of any of the above remedies does not preclude DEO from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by DEO to require strict performance does not affect, extend or waive any other right or remedy available or affect the later exercise of the same right or remedy by DEO for any other default by the Subrecipient.

**(13) Dispute Resolution.** DEO shall decide disputes concerning the performance of the Agreement, document dispute decisions in writing and serve a copy of same on the Subrecipient. All decisions are final and conclusive unless the Subrecipient files a petition for administrative hearing with DEO within twenty-one (21) days from the date of receipt of the decision. Exhaustion of administrative remedies prescribed in Chapter 120, F.S., is an absolute condition precedent to the Subrecipient's ability to pursue any other form of dispute resolution; provided however, that the Parties may mutually agree to employ the alternative dispute resolution procedures outlined in Chapter 120, F.S.

**(14) Citizen Complaints.** The goal of the State is to provide an opportunity to resolve complaints in a timely manner, usually within fifteen (15) business days as expected by HUD, if practicable, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

Applicants are allowed to appeal program decisions related to one of the following activities:

- (a) A program eligibility determination
- (b) A program assistance award calculation and
- (c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Disaster Recovery email at [CDBG-DR@deo.myflorida.com](mailto:CDBG-DR@deo.myflorida.com) or submit by postal mail to the following address:

Attention: Office of Disaster Recovery  
Florida Department of Economic Opportunity  
107 East Madison Street  
The Caldwell Building, MSC 160

Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:

- (a) Investigations as necessary;
- (b) Resolution; or
- (c) Follow-up actions.

If the complainant is not satisfied by the Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to the DEO at:

Department of Economic Opportunity  
Caldwell Building, MSC-400  
107 E Madison Street  
Tallahassee, FL 32399

The Florida Office of Disaster Recovery operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or [www.hud.gov/fairhousing](http://www.hud.gov/fairhousing).

**(15) Termination.**

(a) DEO may suspend or terminate this Agreement for cause upon twenty-four (24) hour written notice, from the date notice is sent by DEO. Cause includes, but is not limited to the Subrecipient's improper or ineffective use of funds provided under this Agreement; fraud; lack of compliance with any applicable rules, regulations, statutes, executive orders, HUD guidelines, policies, directives or laws; failure, for any reason, to timely and/or properly perform any of the Subrecipient's obligations under this Agreement; submission of reports that are incorrect or incomplete in any material respect and refusal to permit public access to any document, paper, letter or other material subject to disclosure under law, including Chapter 119, F.S., as amended. The reasons for Termination are listed in the immediately preceding sentence for illustration purposes but are not limiting DEO's sole and absolute discretion with respect to DEO's right to terminate this Agreement. In the event of suspension or termination, the Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs.

(b) DEO may unilaterally terminate this Agreement, in whole or in part, for convenience by providing the Subrecipient fourteen (14) days written notice from the date notice is sent by DEO, setting forth the reasons for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, DEO determines that the remaining portion of the award will not accomplish the purpose for which the award was made, DEO may terminate the portion of the award which will not accomplish the purpose for which the award was made. The Subrecipient shall continue to perform any work not terminated. In the event of termination for convenience, the Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs for the terminated portion of work.

(c) The Parties may terminate this Agreement for their mutual convenience in writing, in the manner agreed upon by the Parties, which must include the effective date of the termination.

(d) In the event that this Agreement is terminated, the Subrecipient shall not incur new obligations under the terminated portion of the Agreement after the date the Subrecipient has received the notification of termination. The Subrecipient shall cancel as many outstanding obligations as possible. DEO shall disallow all costs incurred after the Subrecipient's receipt of the termination notice. The Subrecipient shall not be relieved of liability to DEO because of any breach of the Agreement by the Subrecipient. DEO may, to the extent authorized by law, withhold payments to the Subrecipient for the purpose of set-off until the exact amount of damages due to DEO from the Subrecipient is determined.

(e) Upon expiration or termination of this Agreement the Subrecipient shall transfer to DEO any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

(f) Any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must either:

1. Be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein; or

2. If not used to meet a national objective, Subrecipient shall pay to DEO an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

(g) The rights and remedies under this clause are in addition to any other rights or remedies provided by law or under this Agreement.

**(16) Notice and Contact.**

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, first class or certified mail with return receipt requested, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of DEO's Grant Manager for this Agreement is:

Deborah Boyette  
107 E. Madison Street  
Tallahassee, FL 32399  
Office: 850-717-8531  
Deborah.Boyette@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Elly Soto McKuen, City of Bonita Springs  
9101 Bonita Beach Road  
Bonita Springs, FL 34135  
239-949-6246  
Fax: 239-949-6245  
Elly.McKuen@CityofBonitaSprings.org

(d) If different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as stated in Paragraph (16) above.

**(17) Contracts.** If the Subrecipient contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions or other changes thereto, must be forwarded to DEO for prior written approval. For each contract, the Subrecipient shall report to DEO as to whether that contractor or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, F.S. The Subrecipient shall comply with the procurement standards in 2 C.F.R. §200.318 - §200.326 when procuring property and services under this Agreement (refer to Attachment D).

The Subrecipient shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

- (a) the period of performance or date of completion;
- (b) the performance requirements;
- (d) that the contractor is bound by the terms of this Agreement;
- (e) that the contractor is bound by all applicable State and Federal laws, rules, and regulations;
- (f) that the contractor shall hold DEO and the Subrecipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
- (g) the obligation of the Subrecipient to document in Subrecipient's reports the contractor's progress in performing its work under this Agreement; and
- (h) the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards – (refer to Attachment L).

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities (24 C.F.R. 570.489(l)), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The Subrecipient shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

**(18) Terms and Conditions.** This Agreement contains all the terms and conditions agreed upon by the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous understandings. No waiver by DEO may be effective unless made in writing by an authorized DEO official.

**(19) Attachments.**

- (a) If any inconsistencies or conflict between the language of this Agreement and the attachments arise, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- (b) This Agreement contains the following attachments:
  - Attachment A – Scope of Work
  - Attachment B – Project Budget
  - Attachment C – Activity Work Plan
  - Attachment D – Program and Special Conditions
  - Attachment E – State and Federal Statutes, Regulations and Policies
  - Attachment F – Civil Rights Compliance
  - Attachment G – Reports
  - Attachment H – Warranties and Representations
  - Attachment I – Audit Requirements

Exhibit 1 to Attachment I – Funding Sources  
Attachment J – Audit Compliance Certification  
Attachment K – SERA Access Authorization Form  
Attachment L – 2 CFR Appendix II to Part 200  
Attachment M – Subrogation Agreement

**(20) Funding/Consideration.**

- (a) The funding for this Agreement shall not exceed \$11,021,919 eleven million twenty one thousand nine hundred nineteen dollars subject to the availability of funds. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon annual appropriations by the Legislature and subject to any modification in accordance with Chapter 216, F.S. or the Florida Constitution.
- (b) DEO will provide funds to the Subrecipient by issuing a Notice of Subgrant Award/Fund Availability ("NFA") through DEO's financial management information system. Each NFA may contain specific terms, conditions, assurances, restrictions or other instructions applicable to the funds provided by the NFA. By accepting funds made available through an NFA, the Subrecipient agrees to comply with all terms, conditions, assurances, restrictions or other instructions listed in the NFA.
- (c) By execution of this Agreement, the Subrecipient certifies that necessary written administrative procedures, processes and fiscal controls are in place for the operation of its CDBG-DR program for which the Subrecipient receives funding from DEO. These written administrative procedures, processes and fiscal controls must, at minimum, comply with applicable state and federal law, rules, regulations, guidance and the terms of this Agreement. The Subrecipient agrees to comply with all the terms and conditions of Attachment D, Program and Special Conditions.
- (d) The Subrecipient shall expend funds only for allowable costs and eligible activities, in accordance with the Scope of Work.
- (e) The Subrecipient shall request all funds in the manner prescribed by DEO. The authorized signatory for the Subrecipient set forth on the SERA Access Authorization Form, Attachment K, to this Agreement, must approve the submission of each Request for Funds ("RFF") on behalf of the Subrecipient.
- (f) Except as set forth herein, or unless otherwise authorized in writing by DEO, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for funding with CDBG-DR funds.
- (g) If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the Florida Legislature, the State Chief Financial Officer or under Subparagraph (20)(i), Mandated Conditions of this Agreement, all obligations on the part of DEO to make any further payment of funds will terminate and the Recipient shall submit its administrative closeout report and subgrant agreement closeout package within thirty (30) calendar days from receipt of notice from DEO.
- (h) The Subrecipient is ultimately responsible for the administration of this Agreement, including monitoring and oversight of any person or entity retained or hired by the Subrecipient.

**(21) Repayments.**

- (a) The Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. The Subrecipient shall ensure that its contractors, subcontractors and consultants only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.
- (b) In accordance with Section 215.971, F.S., the Subrecipient shall refund to DEO any unobligated funds which have been advanced or paid to the Subrecipient.

(c) The Subrecipient shall refund to DEO any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors or consultants are entitled under the terms and conditions of this Agreement.

(d) The Subrecipient shall refund to DEO any funds received for an activity if the activity does not meet one of the three National Objectives listed in 24 C.F.R. § 570.483(b), (c) and (d); provided, however, the Subrecipient is not required to repay funds for subgrant administration unless DEO, in its sole discretion, determines the Subrecipient is at fault for the ineligibility of the activity in question.

(e) The Subrecipient shall refund to DEO any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to DEO, by the Subrecipient, within thirty (30) calendar days from Subrecipient's receipt of notification of such non-compliance.

(f) In accordance with Section 215.34(2), F.S., if a check or other draft is returned to DEO for collection, the Subrecipient shall pay to DEO a service fee of \$15.00 or five percent of the face amount of the returned check or draft, whichever is greater. All refunds or repayments to be made to DEO under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to DEO at the following address:

Department of Economic Opportunity  
Community Development Block Grant Programs Cashier  
107 East Madison Street – MSC 400  
Tallahassee, Florida 32399-6508

**(22) Mandated Conditions.**

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a DEO request or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations and materials are incorporated herein by reference.

(b) This Agreement shall be construed under the laws of the State of Florida and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. The Parties explicitly waive any right to jury trial.

(c) If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

(d) Any power of approval or disapproval granted to DEO under the terms of this Agreement shall survive the term of this Agreement.

(e) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(f) The Subrecipient shall comply with all applicable local, state and federal laws, including the Americans With Disabilities Act of 1990, as amended; the Florida Civil Rights Act, as amended, Chapter 760, Florida Statutes; Title VII of the Civil Rights Act of 1964, as amended; (P.L. 101-336, 42 U.S.C. § 12101 *et seq.*) and laws which prohibit discrimination by public and private entities on in employment, public accommodations, transportation, state and local government services and telecommunications.

(g) Pursuant to Section 287.133(2)(a), F.S., a person or affiliate, as defined in Section 287.133(1), F.S., 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 contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-

five thousand dollars (\$35,000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the convicted vendor list.

(h) Pursuant to Section 287.134(2)(a), F.S., an entity or affiliate, as defined in Section 287.134(1), 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. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the discriminatory vendor list.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(j) Any bills for travel expenses shall be submitted and reimbursed in accordance with Section 112.061, F.S., the rules promulgated thereunder and 2 C.F.R. § 200.474.

(k) If the Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to DEO or be applied against DEO's obligation to pay the Agreement award amount.

(l) The Subrecipient hereby acknowledges that the Subrecipient is subject to Florida's Government in the Sunshine Law (Section 286.011, F.S.) with respect to the meetings of the Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. The Subrecipient hereby agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

(m) The Subrecipient shall comply with section 519 of P. L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

**(23) Lobbying Prohibition.**

(a) No funds or other resources received from DEO under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Subrecipient certifies, by its signature to this Agreement, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. The Subrecipient shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose as described in this Paragraph (22), above. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**(24) Copyright, Patent and Trademark.** Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by the Subrecipient to the State of Florida.

(a) If the Subrecipient has a pre-existing patent or copyright, the Subrecipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the Subrecipient shall refer the discovery or invention to DEO for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films or other copyrightable material are produced, the Subrecipient shall notify DEO. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Subrecipient to the State of Florida.

(c) Within thirty (30) calendar days of execution of this Agreement, the Subrecipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Subrecipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and DEO shall have the right to all patents and copyrights which accrue during performance of the Agreement.

**(25) Legal Authorization.**

(a) The Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Subrecipient certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement. DEO may, at its discretion, request documentation evidencing the undersigned has authority to bind the Subrecipient to this Agreement as of the date of execution; any such documentation is incorporated herein by reference.

(b) The Subrecipient warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit, restrain or diminish the Subrecipient's ability to satisfy its Agreement obligations. The Subrecipient shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of the Agreement.

**(26) Public Record Responsibilities.**

(a) In addition to the Subrecipient's responsibility to directly respond to each request it receives for records, in conjunction with this Agreement and to provide the applicable public records in response to such request, the Subrecipient shall notify DEO of the receipt and content of all such requests by sending an email to [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com) within one (1) business day from receipt of the request.

(b) The Subrecipient shall keep and maintain public records required by DEO to perform the Subrecipient's responsibilities hereunder. The Subrecipient shall, upon request from DEO's custodian of public records, provide DEO 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 Chapter 119, F.S., or as otherwise provided by law. The Subrecipient shall allow public access to all documents, papers, letters or other materials made or received by the Subrecipient in conjunction with this Agreement, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and Section 119.07(1), F.S. For records made or received by the Subrecipient in conjunction with this Agreement, the Subrecipient shall respond to requests to inspect or copy such records in accordance with Chapter 119, F.S. For all such requests for records that are public records, as public records are defined in Section 119.011, F.S., the Subrecipient shall be responsible for providing such public records per the cost structure provided in Chapter 119, F.S., and in accordance with all other requirements of Chapter 119, F.S., or as otherwise provided by law.

(c) This Agreement may be terminated by DEO for refusal by the Subrecipient to comply with Florida's public records laws or to allow public access to any public record made or received by the Subrecipient in conjunction with this Agreement.

(d) If, for purposes of this Agreement, the Subrecipient is a "contractor" as defined in Section 119.0701(1)(a), F.S. ("Subrecipient-contractor"), the Subrecipient-contractor shall transfer to DEO, at no cost to DEO, all public records upon completion including termination, of this Agreement or keep and maintain public records required by DEO to perform the service. If the Subrecipient-contractor transfers all public records to the public agency upon completion of the Agreement, the Subrecipient-contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Subrecipient-contractor keeps and maintains public records upon completion of the Agreement, the Subrecipient-contractor shall meet all applicable requirements for retaining public records in accordance with Chapters 119 and 257, F.S. All records stored electronically must be provided to DEO, upon request from DEO's custodian of public records, in a format that is compatible with the information technology systems of DEO.

(e) If DEO does not possess a record requested through a public records request, DEO shall notify the Subrecipient-contractor of the request as soon as practicable, and the Subrecipient-contractor must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. If the Subrecipient-contractor does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. A Subrecipient-contractor who fails to provide public records to DEO within a reasonable time may be subject to penalties under Section 119.10, F.S.

(f) The Subrecipient shall notify DEO verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours if any data in the Subrecipient's possession related to this Agreement is subpoenaed or improperly used, copied or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. The Subrecipient shall cooperate with DEO, in taking all steps as DEO deems advisable, to prevent misuse, regain possession or otherwise protect the State's rights and the data subject's privacy.

(g) The Subrecipient acknowledges that DEO is subject to the provisions of Chapter 119, F.S., relating to public records and that reports, invoices and other documents the Subrecipient submits to DEO under this Agreement constitute public records under Florida Statutes. The Subrecipient shall cooperate with DEO regarding DEO's efforts to comply with the requirements of Chapter 119, F.S.

(h) If the Subrecipient submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by the Subrecipient prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of Chapter 119, F.S., prior to submittal of the record to DEO serves as the Subrecipient's waiver of a claim of exemption. The Subrecipient shall ensure 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 Agreement term and following completion of the Agreement if the Subrecipient-contractor does not transfer the records to DEO upon completion, including termination, of the Agreement.

**(i) IF SUBRECIPIENT-CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT-CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via email at [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com), or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.**

(j) To the extent allowable by law, the Subrecipient shall be fully liable for the actions of its agents, employees, partners, contractors and subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Subrecipient, its agents, employees, partners, contractors or subcontractors, provided, however, that the Subrecipient does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but not the obligation, to enforce this indemnification provision.

(k) DEO does not endorse any Subrecipient, commodity, or service. Subject to Chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Subrecipient's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any other entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives or subcontractors with the professional skills necessary to perform the work services required by the Agreement.

(l) The Subrecipient shall comply with the requirements set forth in Section 119.0701, F.S., when entering into any public agency contract for services after the Effective Date of this Agreement. The Subrecipient shall amend each of the Subrecipient's public agency contracts for services already in effect as of the Effective Date of this Agreement and which contract will or may be funded in whole or in part with any public funds. DEO may terminate this Agreement if the Subrecipient does not comply with this provision.

**(27) Employment Eligibility Verification.**

(a) Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require the Subrecipient to:

1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Subrecipient during the Agreement term; and,

2. Include in all contracts under this Agreement the requirement that contractors, subcontractors, consultants and subrecipients performing work or providing services pursuant to this Agreement use the E-Verify system to verify the employment eligibility of all new employees hired by the contractors, subcontractors, consultants and subrecipients during the term of the contract.

(b) The Department of Homeland Security's E-Verify system can be found at:

<http://www.uscis.gov/e-verify>

(c) If the Subrecipient does not have an E-Verify MOU in effect, the Subrecipient must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

**(28) Program Income.**

(a) The Subrecipient shall report to DEO all program income (as defined at 24 C.F.R. § 570.500(a) or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the Subrecipient's Quarterly Progress Report. The Subrecipient shall use program income in accordance with the applicable requirements of 2 C.F.R. part 200, 24 C.F.R. part 570.504, and the terms of this Agreement.

(b) Program income generated after closeout shall be returned to DEO. Program income generated prior to closeout shall be returned to DEO unless the program income is used to fund additional units of CDBG-DR activities, specified in a modification to this Agreement and duly executed prior to administrative closeout.

**(29) National Objectives**

All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this Agreement shall meet the following national objectives and satisfy the following criteria:

- (a) Benefit to low- and moderate- income persons;
- (b) Aid in prevention or elimination of slums or blight; and
- (c) Meet a need having particular urgency (referred to as urgent need).

**(30) Independent Contractor.**

(a) In the Subrecipient's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed that the Subrecipient is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to or shall be deemed to constitute an employer/employee relationship, partnership or joint venture between the Parties. The Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Nothing in this Agreement shall be construed to create any agency or employment relationship between DEO and the Subrecipient, its employees, subcontractors or agents. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

(b) The Subrecipient, its officers, agents, employees, subcontractors or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, agent, joint venturer, or partner of the State of Florida.

(c) Subrecipient shall have sole right to control the manner, method and means by which the services required by this Agreement are performed. DEO shall not be responsible to hire, supervise or pay Subrecipient's employees. Neither the Subrecipient, nor its officers, agents, employees, subcontractors or

assignees are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.

(d) The Subrecipient agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, servant, joint venturer or partner of the State of Florida.

(e) Unless justified by the Subrecipient, and agreed to by DEO in the Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial or clerical support) to the Subrecipient or its subcontractor or assignee.

(f) DEO shall not be responsible for withholding taxes with respect to the Subrecipient's use of funds under this Agreement. The Subrecipient shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits or employee benefits of any kind. The Subrecipient shall ensure that its employees, subcontractors and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.


(g) The Subrecipient, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

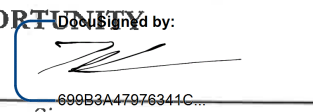
(h) DEO shall not be responsible for provide any training to Subrecipient, its employees, assigns, agents, representatives or subcontractors in the professional skills necessary to perform the work services required by the Agreement; DEO may provide training in the form of an Implementation Workshop in keeping with implementation

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State of Florida  
Department of Economic Opportunity  
Federally Funded Subrecipient Agreement  
Signature Page

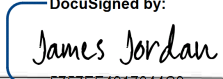
IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in the attachments and exhibits hereto, the Parties executed this Agreement by their duly authorized undersigned officials.

**CITY OF BONITA SPRINGS**  
By   
Signature  
**Peter Simmons**  
Title Mayor  
Date 6-17-2020  
Federal Tax ID # 85-8013216764BC-4  
DUNS # 196164110

**DEPARTMENT OF ECONOMIC OPPORTUNITY**  
By   
Signature  
**Ken Lawson**  
Title Director  
Date 7/8/2020

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC OPPORTUNITY

By:   
7/8/2020  
Approved Date: \_\_\_\_\_

## Attachment A – Scope of Work

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1. **PROJECT DESCRIPTION:** The U.S. Department of Housing and Urban Development (HUD) allocated Community Development Block Grant Disaster Recovery (CDBG-DR) funds to the State of Florida to be distributed in the Federal Emergency Management Agency (FEMA) declared counties impacted by Hurricane Irma.

The Florida Department of Economic Opportunity (DEO) was awarded \$85,819,653 in Infrastructure repair funding through the Community Development Block Grant-Disaster Recovery (CDBG-DR) Program by the U.S. Department of Housing and Urban Development (HUD) to address unmet disaster recovery needs related to damages from Hurricane Irma.

Projects that are eligible under the CDBG-DR Infrastructure Repair Program include:

- Restoration of infrastructure damaged by Hurricane Irma (including water and sewer facilities, streets, provision of generators, removal of debris, drainage, bridges, etc.);
- Water and sewer facilities have been identified as areas of critical importance. Projects involving these type facilities;
- Public facilities such as emergency community shelters;
- Demolition, rehabilitation of publicly or privately owned commercial or industrial buildings; and
- Economic revitalization which includes any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the local economy.

Bonita Springs was awarded \$11,021,919 of CDBG-DR funds to repair the stormwater drainage system that experienced extensive flooding during Hurricane Irma

### 2. SUBRECIPIENT RESPONSIBILITIES:

#### A. CDBG-DR INFRASTRUCTURE PROGRAM IMPLEMENTATION

The subrecipient shall perform the following tasks under this agreement:

1. Complete and submit to DEO within 30 days of agreement execution, a staffing plan which must be reviewed and approved by the DEO Agreement Manager prior to implementation. Should any changes to the staffing plan be deemed necessary, an updated plan must be submitted to DEO for review and approval. The staffing plan must include the following:
  - a. Organizational Chart; and,

- b. Job descriptions for Subrecipient's employees, contracted staff, vendors and contractors.
2. Develop and submit a copy of the following policies and procedures to the DEO Agreement Manager for review and approval within the 30 days of execution. The Agreement Manager will provide approval in writing prior to the policies and procedures being implemented.
  - a. Procurement policies and procedures that incorporate 2 CFR Part 200.317-326.
  - b. Administrative financial management policies, which must comply with all applicable HUD CDBG-DR and State of Florida rules
  - c. Quality assurance and quality control system policies and procedures that comply with all applicable HUD CDBG-DR and DEO Policies
  - d. Policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of applicant information, monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring policy, and which items will be monitored, and procedure for referring instances of fraud, waste and abuse to HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).
  - e. Policies and procedures for the requirements under 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award.
3. Attend fraud related training offered by HUD OIG to assist in the proper management of the CDBG-DR grant funds when available.
4. Upload required documents into a reporting system provided by DEO.
5. Complete and submit an updated Project Detail Budget (Attachment B) for review and approval by DEO no later than 30 days after the execution of the subrecipient agreement. Any changes to the Project Detail Budget must be submitted in the monthly report submitted to DEO for review and approval by the Agreement Manager.
6. Complete and submit an updated Activity Work Plan (Attachment C) for review and approval by DEO no later than 30 days after the execution of the subrecipient agreement. Any changes to the Activity Work Plan should be submitted in the monthly report submitted to DEO for review and approval by the Agreement Manager.
7. Maintain organized subrecipient agreement files and make them accessible to DEO or its representatives upon request.

8. Comply with all terms and conditions of the subrecipient agreement, Infrastructure Program guidelines, Action Plans, Action Plan amendments, and Federal, State and local laws.
9. Provide copies of all proposed procurements documents to DEO 10 business days prior to posting as detailed in Section (17) of the Subrecipient Agreement. The proposed procurement documents will be reviewed and approved by the DEO Agreement Manager. Should the procurement documents require revisions based on state or federal requirements, the subrecipient will be required to postpone procurement and submit revised documents for review and approval.
10. Complete procurement of all applicants for internal grants management and compliance and direct program and product production, including:
  - (a) Selection of applicants, subrecipients, and/or staff that will be responsible for managing applicant intake and related operations, compliance, finance, finance and administration;
  - (b) Selection of applicants, subrecipients, and/or staff that will be responsible for managing demolition and/or construction;
  - (c) Selection of applicants, subrecipients, and/or staff that will be responsible for Appraisal, Environmental Review, title services, and legal services;
  - (d) Copies of all contracts will be executed by the subrecipients. Contracts must be provided to DEO prior to execution as detailed in Attachment D. Any contract executed by the subrecipients must follow the terms and conditions set forth in this agreement provided between the Department and the subrecipient. Should the submitted contract require necessary additions and/or changes, the Department's Agreement Manager will contact the subrecipient regarding changes. The subrecipient is required to submit the updated contract within 30 days. Should the contract not be submitted in a timely manner, the subrecipient will be required to complete the selection process once more.
11. Ensure all projects seeking assistance under the current CDBG-DR funds for Hurricane Irma, and any future funds allocated for Hurricane Irma, provided by DEO, receive the required Environmental clearance from DEO prior to the Subrecipient being able to commit CDBG-DR funds.
12. Provide the following documentation to DEO within ten (10) calendar days after the end of each month:
  - (a) A revised detail report measuring the actual cost versus the projected cost.
  - (b) An updated attachment C which documents any changes to the projected progress along with justification for the revision.

13. Develop and submit to DEO a monthly revised detailed timeline for implementation consistent with the milestones outlined in the Infrastructure program guidelines and report actual progress against the projected progress ten (10) calendar days after the end of each month.
  14. Provide the following information on a quarterly basis within ten (10) calendar days of the end of each quarter:
    - (a) Submit updated organization chart on a quarterly basis with quarterly report.
    - (b) If staffing changes there must be a submittal stating the names, job descriptions, on the monthly report deadline
    - (c) A progress report documenting the following information:
      - i. Accomplishments within the past quarter;
      - ii. Issues or risks that have been faced with resolutions; and
      - iii. Projected activities to be completed within the following quarter.
  15. Subrecipient shall adhere to the deadlines for the project as agreed upon in the Attachment C, Activity Work Plan. If the Subrecipient is unable to meet a deadline within 30 calendar days of the due date, the Subrecipient shall request an extension of such deadline from DEO in writing no later than thirty (30) business days prior to the deadline. Deadlines shall not be extended outside of the term of this agreement except by a formal amendment executed in accordance with Section (4) Modification of Agreement.
  16. Close out reports will be no later than 60 calendar days after this Agreement ends or is otherwise terminated. Subrecipient shall provide pictures to document completed work.
- B. Program Delivery/Administration:** Tasks that are eligible for reimbursement under the Program Delivery/Administration Deliverable are as follows:
1. Conduct compliance reviews;
  2. Prepare policies and procedures as outlined in this contract;
  3. Prepare and submit public records;
  4. Maintain records as outlined in this contract;
  5. Prepare requests for funds as outlined in the contract; and
  6. Prepare and submit reports as outlined in this contract.
- C. Engineering:** Tasks that are eligible for reimbursement under the Engineering Services Deliverable are as follows:
1. Basic Engineering Services
    - a. Prepared permit applications;
    - b. Attended pre-bid/pre-construction conference;
    - c. Prepared change orders;

- d. Reviewed construction bids and make recommendation to the Subrecipient; and
- e. Bid for contractor.

2. Resident Inspection

- a. Inspected construction activities for consistency with plans and specifications; and
- b. Reviewed construction invoices and certify costs.

**D. Acquisition:** Subrecipient shall acquire three parcels of land which total 47.4 acres, adjacent to the Imperial River which are vacant and undeveloped wood areas that are flood prone and would become dry detention areas. The purchase price must be consistent with applicable uniform cost principles and the buyout program, if applicable. Prior to acquiring the property the subrecipient must submit all documentation for review and approval as outlined in Attachment D, number 6, listed in this contract. Subrecipient must develop as well as demolish property as consistent with the CDBG-DR guidelines. For tenant relocation, the subrecipient must follow the CDBG-DR guidelines regarding tenant displacement and relocation. Subrecipient must also complete the following tasks:

- 1. Appraisal
  - a. Review appraisal;
  - b. Property sale;
  - c. Relocation or rental assistance;
  - d. Closing cost;
  - e. Moving cost;
  - f. Relocation specialist fees; and
  - g. Demolition.

**E. Construction:** Installation of backflow preventers at critical locations in various neighborhoods. In addition, construction of a series of storm sewers to channel water through various points in the neighborhoods to the Imperial River, expanding the storm sewer network to help the area drain more efficiently. Increase the storage of pond locations in the existing area. Stormwater pumps will be installed to support the detention areas. Subrecipient must conduct the following tasks:

- 1. Complete all construction as outlined in the executed construction bid; and
- 2. Conduct final inspections of completed constructions.

**3. DELIVERABLES**

Grantee agrees to provide the following services as specified:

<b>Deliverable No. 1 – Program Delivery/Administration</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall complete eligible project implementation tasks as detailed in Section 2B Subrecipient Responsibilities of this Scope of Work	Subrecipient may request reimbursement upon completion of the tasks listed in 2.B. evidenced by submittal of the invoice	Failure to complete the minimum performance measures as specified shall result in non-payment for this

Total Deliverable 1 cost reimbursement not to exceed: \$425,000	package as outlined in Section 4.A. below.	deliverable for each payment request.
<b>Deliverable 1 - \$425,000.00</b>		
<b>Deliverable No. 2 – Engineering</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall complete eligible project implementation tasks as detailed in Section 2C Subrecipient Responsibilities of this Scope of Work  Total Deliverable 2 cost reimbursement not to exceed: \$1,746,919	Subrecipient may request reimbursement upon completion of the tasks listed in 2.C. evidenced by submittal of the invoice package as outlined in Section 4.A. below.	Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.
<b>Deliverable 2 - \$1,746,919.00</b>		
<b>Deliverable No. 3 – Acquisition</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall acquire property and perform acquisition related activities outlined in Section 2D Subrecipient Responsibilities of this Scope of Work  Total Deliverable 3 cost reimbursement not to exceed \$3,450,000	Subrecipient may request reimbursement upon completion of the tasks listed in 2.D., evidenced by submittal of the invoice package as outlined in Section 4.A. below as well as the following: <ul style="list-style-type: none"> <li>• A completed Property Acquisition Report, identifying address of the parcel acquired, its identification number, and the type and amount of eligible expenses incurred related to the acquisition of that parcel.</li> <li>• A completed appraisal.</li> <li>• A completed review appraisal.</li> <li>• A copy of the warranty deed.</li> <li>• A copy of the settlement statement.</li> </ul>	Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.
<b>Deliverable 3 - \$3,450,000.00</b>		

<b>Deliverable No. 4 – Construction</b>		
<b>Tasks</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
The Subrecipient shall complete infrastructure construction as detailed in Section 2E Subrecipient Responsibilities of this Scope of Work  Total Deliverable 4 cost reimbursement not to exceed \$5,400,000.	Subrecipient may request reimbursement upon completion of the tasks listed in 2.E. evidenced by submittal of the invoice package as outlined in Section 4.A. below.	Failure to complete the minimum performance measures as specified shall result in non-payment for this deliverable for each payment request.
		<b>Deliverable 4 - \$5,400,000.00</b>

**COST SHIFTING:** The deliverable amounts specified within the Deliverables section 3 table above are established based on the Parties’ estimation of sufficient delivery of services fulfilling grant purposes under the Agreement in order to designate payment points during the Agreement Period; however, this is not intended to restrict DEO’s ability to approve and reimburse allowable costs Grantee incurred providing the deliverables herein. Prior written approval from DEO’s Agreement Manager is required for changes to the above Deliverable amounts that do not exceed 10% of each deliverable total funding amount. Changes that exceed 10% of each deliverable total funding amount will require a formal written amendment request from Grantee, as described in **MODIFICATION** section of the Agreement. Regardless, in no event shall DEO reimburse costs of more than the total amount of this Agreement.

**4. DEO’S RESPONSIBILITIES:**

- Monitor the ongoing activities of the Subrecipient to ensure all activities are being performed in accordance with the Agreement to the extent required by law or deemed necessary by DEO in its discretion.
- Assign an Agreement Manager as a point of contact for the Subrecipient
- Review the Subrecipient’s invoice packages and process them on a timely basis.
- Provide a system for subrecipients to submit all required documentation related to the project.
- Monitor Subrecipient progress, review reports, conduct site visits, as determined necessary and at DEO’s sole and absolute discretion, and process payments to Subrecipient.
- Provide ongoing technical assistance to ensure successful completion of the project as well as adherence to state and federal guidelines.

**4.A. INVOICE SUBMITTAL**

DEO shall reimburse the Subrecipient in accordance with Section 3, above. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 5 of this Agreement, the Subrecipient and its subcontractors may only expend funding under this Agreement for allowable costs resulting from

obligations incurred during this Agreement. 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 ([http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/)).

1. Subrecipient shall provide one invoice per deliverable for all services rendered during the applicable period of time. In any month no deliverable has been completed, the subrecipient will provide notice that no invoicing will be submitted.
2. The following documents shall be submitted with the itemized invoice:
  - a. A cover letter signed by Subrecipient's Agreement Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 3, DELIVERABLES, of this SCOPE OF WORK; (3) have been paid; and (4) were incurred during this Agreement.
  - b. Subrecipient's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;
  - c. A certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.
  - d. Photographs of the project in progress and completed work;
  - e. A copy of all supporting documentation for vendor payments;
  - f. A copy of the bank statement that includes the cancelled check or evidence of electronic funds transfer. The State may require any other information from Subrecipient that the State deems necessary to verify that the services have been rendered under this Agreement.
3. The Subrecipient's invoice and all documentation necessary to support payment requests must be submitted into DEO's Subrecipient Management Reporting Application (SERA). Further instruction on SERA invoicing and reporting, along with a copy of the invoice template, will be provided upon execution of the agreement.

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### Attachment B – Project Budget

Subrecipient: Bonita Springs

Contract Number: \_\_\_\_\_

Modification Number: \_\_\_\_\_

Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-DR Amount	Other Funds	Source *	Total Funds
<b>1. Housing Program - Homeowner Service Project (Example Activities)</b>													
	Home Repair												
	Reconstruction												
	Replacement of Manufactured Homes												
	Temporary Rental and Mortgage Assistance												
	Buyout / Acquisition for Redevelopment												
<b>2. Housing Program - Supportive Housing Initiative PUD Rental Housing Project (Example Activities)</b>													
<b>3. Public Facilities Program – Unified Service Center (Example Activities)</b>													
<b>4. Infrastructure Program (Example Activities)</b>													
	Acquisition	X					5210		5210	3,450,000.00			3,450,000.00
	Stormwater Improvements	X					5210		5210	5,400,000.00			5,400,000.00

DEO Agreement No.: IR015

5.	<b>Administration</b>									425,000.00			425,000.00
6.	<b>Engineering</b>									1,746,919.00			1,746,919.00
	<b>Totals:</b>									11,021,919.00			11,021,919.00

\*Show the sources and amounts of Other Funds needed to complete the project below, including local funds, grants from other agencies and program income.

	Source of Other Funds	Amount
1.		
2.		
3.		
4.		

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## Attachment C – Activity Work Plan

Subrecipient	Bonita Springs	Activity:	Administration	Project Budget:	\$425,000.00
Contract Number:		Date Prepared:	February 28, 2020	Modification Number:	N/A

Start Date (month/year)	End Date (month/year)	Describe Proposed Action to be Completed by the “End Date.” <i>Examples of Actions: Procure Administrator or Engineer, Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, Construction Completion (33, 66, and 100 percent or 25, 50, 75, and 100 percent), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated and Submit Closeout Package to DEO.</i>	Estimated Units to be Completed by the “End Date”	Estimated Funds to be Requested by the “End Date”
4/2020	7/2020	Request approval of professional services from DEO; satisfy all special conditions and submit first request for funds	0	\$5,000.00
4/2020	10/2020	Complete the environmental review and submit request for release of funds to DEO for review and approval	0	
10/2020	7/2021	Prepare plans and specifications bid package.	0	\$25,000.00
8/2021	8/2021	Submit plans and specifications bid package for review and approval; request and receive wage decision.	0	\$25,000.00
9/2021	10/2021	Advertise for bids, hold bid opening, request approval for construction contract from DEO and submit contractor clearance, debarment and Section 3 forms.	N/A	\$25,000.00
11/2021	11/2021	Hold pre-construction meeting and issue Notice to Proceed. Take pre-construction photos of the construction site.	N/A	\$25,000.00
12/2021	3/2022	Construction phase - 25% complete	N/A	\$80,000.00
4/2022	7/2022	Construction phase - 50% complete. Take photos of construction activities.	N/A	\$80,000.00
8/2022	11/2022	Construction phase - 75% complete. Take photos of construction activities	N/A	\$80,000.00
12/2022	3/2023	Construction phase - 100% complete	N/A	\$80,000.00

DEO Agreement No.: IR015

4/2023	8/2023	As-Built plans and final invoices submitted to City; All warranties transferred and construction files reviewed for completion. Submit closeout package, engineer's certification of completion and photos to DEO.	N/A	
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## Attachment C – Activity Work Plan

Subrecipient Bonita Springs Activity: Engineering Project Budget: \$1,746,919.00  
 Contract Number: \_\_\_\_\_ Date Prepared: \_\_\_\_\_ Modification Number: \_\_\_\_\_

Start Date (month/year)	End Date (month/year)	Describe Proposed Action to be Completed by the “End Date.” <i>Examples of Actions: Procure Administrator or Engineer, Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, Construction Completion (33, 66, and 100 percent or 25, 50, 75, and 100 percent), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated and Submit Closeout Package to DEO.</i>	Estimated Units to be Completed by the “End Date”	Estimated Funds to be Requested by the “End Date”
4/2020	7/2020	City procures engineer for design improvements; requests approval of professional services from DEO		
4/2020	10/2020	Environmental completed and submit request for release of funds to DEO for review and approval		
10/2020	7/2021	Prepare plans and specifications, opinion of probable costs. Includes permits from South Florida Water Management District, Florida Department of Environmental Protection and US Army Corps of Engineers.		\$750,000.00
8/2021	8/2021	Submit plans and specifications bid package for review and approval; request and receive wage decision		\$50,000.00
9/2021	10/2021	Advertise for bids, hold bid opening, request approval for construction contract from DEO and submit contractor clearance, debarment and Section 3 forms.		\$50,000.00
11/2021	11/2021	Hold pre-construction meeting and issue Notice to Proceed. Take pre-construction photos of the construction site.		\$50,000.00
12/2021	3/2022	Construction phase 25% complete		\$211,729.75
4/2022	7/2022	Construction phase 50% complete—Take photos of construction activities		\$211,729.75
8/2022	11/2022	Construction phase 75% complete—Take photos of construction activities		\$211,729.75
12/2022	3/2023	Construction phase 100% complete		\$211,729.75

DEO Agreement No.: IR015

4/2023	6/2023	Prepare As-Builts plans and submits to City		
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### Attachment C – Activity Work Plan

Subrecipient Bonita Springs Activity: Acquisition Project Budget: \$3,450,000.00  
 Contract Number: \_\_\_\_\_ Date Prepared: \_\_\_\_\_ Modification Number: \_\_\_\_\_

Start Date (month/year)	End Date (month/year)	Describe Proposed Action to be Completed by the “End Date.” <i>Examples of Actions: Procure Administrator or Engineer, Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, Construction Completion (33, 66, and 100 percent or 25, 50, 75, and 100 percent), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated and Submit Closeout Package to DEO.</i>	Estimated Units to be Completed by the “End Date”	Estimated Funds to be Requested by the “End Date”
9/2020	10/2020	City contracts property owner and determines willing sellers to acquire property for stormwater retention/storage ponds		
1/2021	3/2021	City contacts with consultants to prepare appraisals, conduct title searches, site specific environmental reviews		\$25,000.00
4/2021	5/2022	City contacts property owner, advises of appraised property value, negotiates the sale of property, sale proceeds and closes		
6/2022	10/2022	Closings occur and land transferred to City		\$3,425,000.00

## Attachment C – Activity Work Plan

Subrecipient Bonita Springs Activity: Stormwater Drainage Construction Project Budget: \$5,400,000.00  
 Contract Number: \_\_\_\_\_ Date Prepared: \_\_\_\_\_ Modification Number: \_\_\_\_\_

Start Date (month/year)	End Date (month/year)	Describe Proposed Action to be Completed by the “End Date.” <i>Examples of Actions: Procure Administrator or Engineer, Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, Construction Completion (33, 66, and 100 percent or 25, 50, 75, and 100 percent), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated and Submit Closeout Package to DEO.</i>	Estimated Units to be Completed by the “End Date”	Estimated Funds to be Requested by the “End Date”
9/2021	10/2021	City advertises construction bid for contractor, hold bid opening, request approval for construction contract from DEO and submit contractor clearane, debarment and Section 3 forms		
11/2021	11/2021	Hold pre-construction meeting and issue Notice to Proceed. Take pre-construction photos of the construction site.		
12/2021	3/2022	Construction phase 25% complete		\$1,000,000.00
4/2022	7/2022	Construction phase 50% complete; take photos of construction activities		\$1,000,000.00
8/2022	11/2022	Construction phase 75% complete—Take photos of construction activities		\$1,000,000.00
12/2022	3/2023	Construction phase 100% complete		\$1,500,000.00
4/2023	6/2023	Engineer prepares As-Builts plans and submits to City		
7/2023	7/2023	Contractor submits all final invoices to City, all warranties transferred and construction files reviewed for completion		
8/2023	8/2023	Submits closeout package, engineer’s certification of completion and photos to DEO		
				\$900,000.00

DEO Agreement No.: IR015

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6. If the Subrecipient undertakes any activity subject to the URA, the Subrecipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can determine whether remedial action may be needed. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 C.F.R. § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project.
7. The Subrecipient shall timely submit completed forms for all prime and subcontractors as required by this Agreement, DEO, HUD, and applicable, regulations and guidance laws, specifically including but not limited to:
  - a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
  - b. Section 3 Participation Report (Construction Prime Contractor);
  - c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor), (if applicable); and
  - d. Section 3 Participation Report (Construction Subcontractor), (if applicable).
8. In addition, each construction contract or agreement for new or replacement housing must contain language that requires the contractor to meet the Green Building Standard for Replacement and New Construction of Residential Housing, as defined in the Allocation notice published in the Federal Register Volume 81, Number 224 on Monday, November 21, 2016.
9. For each Request for Funds (RFF) that includes reimbursement of construction costs, the Subrecipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by DEO, signed by the contractor and inspection engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by DEO. For each RFF that includes construction costs, the Subrecipient shall provide a copy of AIA form G702, or a comparable form approved by DEO, if applicable, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by DEO, if applicable.
10. For each project, when the Subrecipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
  - a. Notice to Proceed;
  - b. The contractor's performance bond (100 percent of the contract price); and
  - c. The contractor's payment bond (100 percent of the contract price).
11. The Subrecipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 C.F.R. § 570.487(b)(4).
12. The Subrecipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG-DR funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Subrecipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 C.F.R. § 570.505. Any future change of use of real property shall be in accordance with 24 C.F.R. § 570.489(j).

13. The Subrecipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 C.F.R. part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 C.F.R. 67, and Guidelines for Rehabilitating Historic Buildings.
14. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Subrecipient shall update and submit Form HUD 2880 to DEO within thirty (30) calendar days of the Subrecipient's knowledge of changes in situations which would require that updates be prepared. The Subrecipient must disclose:
  - a. All developers, contractors, consultants and engineers involved in the application or in the planning, development or implementation of the project or CDBG-DR-funded activity; and
  - b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or 10 percent of the grant, whichever is less.
15. If required, the Subrecipient shall submit a final Form HUD 2880, to DEO with the Subrecipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
16. Conflicts of interest relating to procurement shall be addressed pursuant to 24 C.F.R. § 570.489(g). Title 24 C.F.R. § 570.489(h) shall apply in all conflicts of interest not governed by 24 C.F.R. § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG-DR financial assistance to beneficiaries, businesses or other third parties; or any other financial interest, whether real or perceived. Additionally, the Subrecipient agrees to comply with, and this Agreement is subject to, Chapter 112 F.S.
17. Any payment by the Subrecipient using CDBG-DR funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG-DR funds.
18. The Subrecipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.
19. If an activity is designed by an engineer, architect or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

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## Attachment E – State and Federal Statutes, Regulations, and Policies

The CDBG-DR funds available to the Subrecipient through this agreement constitute a subaward of DEO's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of DEO's Federal 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.

The Subrecipient agrees to, and, by signing this Agreement, certifies that, it will comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register Guidance Vol. 83, No. 28/Friday, February 9, 2018/Notices and Vol. 83, No. 157/Tuesday, August 14, 2018/Notices. Notwithstanding the foregoing, (1) the Subrecipient does not assume any of Grantee's responsibilities for environmental review, decision-making and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations and policies that govern the use of the CDBG-DR funds in complying with its obligations under this agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

The Subrecipient also agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available. The Subrecipient further agrees to comply with all other applicable Federal, State and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to the following:

### I. State of Florida Requirements

State of Florida Requirements are stated throughout this Agreement and Attachments thereto.

### II. Audits, Inspections, and Monitoring

#### 1. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

#### 2. Inspections and Monitoring

The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 CFR part 200.

The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement.

This review must include: (1) reviewing financial and performance reports required by DEO; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 CFR §200.521.

#### 3. Corrective Actions

The Subrecipient shall be subject to reviews and audits by DEO, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2). DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may

require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, Grantee may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

### **III. Drug-Free Workplace**

Drug-free workplace. Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide 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).

### **IV. Procurement and Contractor Oversight**

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this agreement. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, specifically including, 24 CFR 570.609 or 24 CFR 570.489(l) as appropriate. CDBG funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement.

### **V. Property Standards**

Real property acquired by the Subrecipient under this agreement shall be subject to 24 CFR 570.489(j) and 24 CFR 570.200(j). The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to DEO for its CDBG-DR program or shall be retained after compensating DEO.

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

### **VI. Federal Funding Accountability and Transparency Act (FFATA)**

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

### **VII. Relocation and Real Property Acquisition**

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the URA shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

### **VIII. Nondiscrimination**

#### **1. 24 CFR part 6**

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

#### **2. Architectural Barriers Act and the Americans with Disabilities Act**

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995 and meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

#### **3. State and Local Nondiscrimination Provisions**

The subrecipient must comply with the Florida Small and Minority Business Assistance Act (§§ 288.703-288.706, F.S.); Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

##### **(i) General Compliance:**

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended. No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under 24 CFR part 1. The identity of complainants

shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(ii) Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives DEO and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient Under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

4. Affirmative Action

(i) Approved Plan

The Subrecipient agrees that it shall carry out pursuant to DEO's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR 60. DEO shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(ii) Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.

(iii) Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

**IX. Labor and Employment**

**1. Labor Standards**

The Subrecipient shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to DEO for review upon request.

**X. Section 3 of the Housing and Urban Development Act of 1968**

**1. Definitions**

A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or (ii) A very low-income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

**2. Compliance**

The Subrecipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 135. The Subrecipient shall include the following "Section 3 clause" at 24 CFR 135.38 in every "Section 3 covered contract" (as defined in 24 CFR 135.5).

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training

positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

### 3. Numerical Goals

Recipients of HUD federal financial assistance shall meet the following hiring and contract numerical goals to achieve compliance with Section 3 as found at 24 CFR 135.30 (Numerical goals for meeting the greatest extent feasible requirement.)

- A. Hiring - Recipients of Section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in Section 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ Section 3 residents as:
  - i. 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
  - ii. 20 percent of the aggregate number of new hires for the one year period beginning in 1996; and
  - iii. 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.
- B. Contracting - Numerical goals set forth in paragraph (B) of this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet threshold specified in Section 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

- i. At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
- ii. At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

## **XI. Conduct**

### **1. Hatch Act**

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **2. Conflict of Interest**

In the procurement of supplies, equipment, construction and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in DEO's procurement policies and procedures. In all cases not governed by the conflict of interest provisions in DEO's procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

### **3. Lobbying Certification**

The Subrecipient hereby certifies that:

- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
- (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (iii) The language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **XII. Religious Activities**

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction or proselytization.

## **XIII. Environmental Conditions**

### **1. Prohibition on Choice Limiting Activities Prior to Environmental Review**

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making and action (see 24 CFR part 58) and is not delegated DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use

of Federal funds for the activity. If DEO has not issued an Authority to Use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process.

2. Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

3. Flood Disaster Protection

The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-DR award and listed at the beginning of this Attachment.

4. Lead-Based Paint

DEO shall follow DEO's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

5. Historic Preservation

The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state or local historic property list.

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## Attachment F – Civil Rights Compliance

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### Fair Housing

As a condition for the receipt of CDBG-DR funds, each Subrecipient must certify that it will "affirmatively further fair housing" in its community. A Subrecipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

Each Subrecipient shall do the following:

- 1) Have in place a fair housing resolution or ordinance that covers all Federally protected classes (race, color, familial status, handicap, national origin, religion and sex);
- 2) Designate an employee as the Fair Housing Coordinator who is available during regular business hours to receive fair housing calls;
- 3) Publish the Fair Housing Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask fair housing questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website;
- 4) Establish a system to record the following for each fair housing call:
  - a) The nature of the call,
  - b) The actions taken in response to the call,
  - c) The results of the actions taken and
  - d) If the caller was referred to another agency, the results obtained by the referral agency;
- 5) Conduct at least one fair housing activity each quarter. Identical activities (see examples below) shall not be conducted in consecutive quarters; and
- 6) Display a fair housing poster in the CDBG-DR Office. (This does not count as a fair housing activity.)

The Subrecipient shall ensure that the fair housing contact person has received training so that he/she can handle fair housing phone inquiries or refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

- Define where discriminatory practices are occurring,
- Help the community measure the effectiveness of its outreach efforts, and
- Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

- Making fair housing presentations at schools, civic clubs and neighborhood association meetings;
- Conducting a fair housing poster contest or an essay contest;
- Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales and church festivals; and
- Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents and apartment complex owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity; however, mailing a DEO-approved fair housing brochure as an insert with utility bills will be accepted as an activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

The Subrecipient shall document its fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG-DR project file and include information about the activities in the comment section of each quarterly report.

### Equal Employment Opportunity

As a condition for the receipt of CDBG-DR funds, each Subrecipient must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-DR funds will abide by the Equal Employment

Opportunity (EEO) Laws of the United States. A Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each Subrecipient shall do the following:

- 1) Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors, subcontractors, subrecipients and consultants from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age or genetics;
- 2) Designate an employee as the EEO Coordinator who is available during regular business hours to receive EEO calls;
- 3) Publish the EEO Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask EEO questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
- 4) Establish a system to record the following for each EEO call:
  - a) The nature of the call,
  - b) The actions taken in response to the call and
  - c) The results of the actions taken;

Each Subrecipient shall maintain a list of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The Subrecipient shall use this list to solicit companies to bid on CDBG-DR-funded construction activities and shall provide a copy of the list to the prime contractor(s) to use when it hires subcontractors and consultants. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list at the following website: <https://osd.dms.myflorida.com/directories>.

## **Section 504 and the Americans with Disabilities Act (ADA)**

As a condition for the receipt of CDBG-DR funds, the Subrecipient must certify that it provides access to all federally funded activities to all individuals, regardless of handicap. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

The Subrecipient shall do the following:

- 1) Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who:
  - a) Has a physical or mental impairment which substantially limits one or more major life activities,
  - b) Has a record of such an impairment or
  - c) Is regarded as having such an impairment;
- 2) Designate an employee as the Section 504/ADA Coordinator who is available during regular business hours to receive Section 504/ADA calls;
- 3) Publish the Section 504/ADA Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask Section 504/ADA questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
- 4) Establish a system to record the following for each Section 504/ADA call:
  - a) The nature of the call,
  - b) The actions taken in response to the call and
  - c) The results of the actions taken.

Section 504 prohibitions against discrimination (see 45 C.F.R. part 84) apply to service availability, accessibility, delivery, employment and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits,
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
- Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.

The ADA regulations (Title II, 28 C.F.R. part 35, and Title III, 28 C.F.R. part 36) prohibit discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

### **Section 3 - Economic Opportunities for Low- and Very Low-Income Persons**

Each Subrecipient shall encourage its contractors to hire qualified low- and moderate-income residents for any job openings that exist on CDBG-DR-funded projects in the community. The Subrecipient and its contractors shall keep records to document the number of low- and moderate-income people who are hired to work on CDBG-DR-funded projects. The number of low- and moderate-income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following clause from 24 C.F.R. § 135.38 is required to be included in CDBG-DR-funded contracts of \$100,000 or more.

#### **Section 3 Clause**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are Subrecipients of HUD assistance for housing.
- B. The Parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers'

representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

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## Civil Rights Regulations

As a condition for the receipt of CDBG-DR funds, each Subrecipient must certify that it will abide by the following Federal laws and regulations:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 C.F.R. § 570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 C.F.R. § 570.490(b) – Unit of general local government's record;
6. 24 C.F.R. § 570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of or subjected to discrimination under any program or activity receiving CDBG-DR funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R. part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Equal Employment Opportunity; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

I hereby certify that BONITA SPRINGS shall comply with all of the provisions and Federal regulations listed in this attachment.

By:



Date:

JUNE 17, 2020

Name:

PETER SIMMONS

Title:

MAYOR

## Attachment G – Reports

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The following reports must be completed and submitted to DEO in the time frame indicated below. Failure to timely file these reports constitutes an Event of Default, as defined in Paragraph (10) Default, of this Agreement.

1. **Monthly Progress Report** must be submitted to DEO ten (10) calendar days after the end of each month.
2. A **Quarterly Progress Report** must be submitted to DEO on forms to be provided by DEO no later than the 10<sup>th</sup> of every April, July, October and January.
3. A **Contract and Subcontract Activity** form, Form HUD-2516, currently available at [https://www.hud.gov/sites/documents/DOC\\_36660](https://www.hud.gov/sites/documents/DOC_36660); which is incorporated herein by reference, must be submitted by April 15 and October 15 each year through the DEO's SERA reporting system. The form must reflect all contractual activity for the period, including Minority Business Enterprise and Woman Business Enterprise participation. If no activity has taken place during the reporting period, the form must indicate "no activity".

The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to DEO) and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

4. In accordance with 2 C.F.R. part 200, should the Subrecipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with 2 C.F.R. part 200 and submitted to DEO no later than nine months from the end of the Subrecipient's fiscal year. If the Subrecipient did not meet the audit threshold, an **Audit Certification Memo** must be provided to DEO no later than nine months from the end of the Subrecipient's fiscal year.

5. A copy of the **Audit Compliance Certification** form, Attachment J, must be emailed to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com) within sixty (60) calendar days of the end of each fiscal year in which this subgrant was open.

6. The **Section 3 Summary Report**, form HUD-60002, must be completed and submitted through DEO's SERA reporting system by July 31, annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.

7. Request for Funds must be submitted as required by DEO and in accordance with the **Scope of Work, Project Detail Budget and Activity Work Plan**.

8. All forms referenced herein are available online or upon request from DEO's grant manager for this Agreement.

## Attachment H – Warranties and Representations

### Financial Management

The Subrecipient's financial management system must comply with the provisions of 2 C.F.R. part 200 (and particularly 2 C.F.R. 200.302 titled "Financial Management"), Section 218.33, F.S., and include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program.
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. The Subrecipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request for Funds (RFF). Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the 2 C.F.R. part 200 (and particularly 2 C.F.R. 200 Subpart E titled "Costs Principles") and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

### Competition

All procurement transactions must follow the provisions of 2 C.F.R. §§ 200.318-200.326 and be conducted in a manner providing full and open competition. The Subrecipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements. Awards must be made to the responsible and responsive bidder or offeror whose proposal is most advantageous to the program, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Subrecipient. Any and all bids or offers may be rejected if there is a sound, documented reason.

### Codes of Conduct

The Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents of the Subrecipient. (*See* 2 C.F.R. § 200.318(c)(1).)

### Business Hours

The Subrecipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

### Licensing and Permitting

All contractors or employees hired by the Subrecipient shall have all current licenses and permits required for all the work for which they are hired by the Subrecipient.

## Attachment I – Audit Requirements

The administration of resources awarded by DEO to the Subrecipient may be subject to audits and/or monitoring by DEO as described in this section.

### MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F - Audit Requirements, and section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by DEO staff to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

### AUDITS

**PART I: FEDERALLY FUNDED.** This part is applicable if the Subrecipient is a state or local government or nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Subrecipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through DEO by this agreement. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Subrecipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Subrecipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Subrecipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Subrecipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Subrecipient resources obtained from other than federal entities).

**PART II: STATE FUNDED.** This part is applicable if the Subrecipient is a non-state entity as defined by Section 215.97(2), F.S.

1. 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 (for fiscal years ending June 30, 2017, and thereafter), the Subrecipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through DEO by this agreement. 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 DEO, 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. For the audit requirements addressed in Part II, paragraph 1, the Subrecipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Subrecipient 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, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Subrecipient's resources obtained from other than state entities).

### 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), F.S., 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, F.S. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

N/A

### PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Subrecipient directly to each of the following:

- a. DEO at each of the following addresses:

Electronic copies (preferred):  
[Audit@deo.myflorida.com](mailto:Audit@deo.myflorida.com)

or

Paper (hard copy):  
Department Economic Opportunity  
MSC # 130, Caldwell Building  
107 East Madison Street  
Tallahassee, FL 32399-4126

- b. The Auditor General's Office at the following address: Auditor General

Local Government Audits/342 Claude  
Pepper Building, Room 401 111 West  
Madison Street Tallahassee, Florida 32399-  
1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or the management letter required by Part III of this form shall be submitted by or on behalf of the Subrecipient directly to:

Electronic copies (preferred):  
[Audit@deo.myflorida.com](mailto:Audit@deo.myflorida.com)

or

Paper (hard copy):  
Department Economic Opportunity  
MSC # 130, Caldwell Building  
107 East Madison Street  
Tallahassee, FL. 32399-4126

4. Any reports, management letters, or other information required to be submitted DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Subrecipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.

**PART V: RECORD RETENTION.** The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or six (6) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The Subrecipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of six (6) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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## Exhibit 1 to Attachment I – Funding Sources

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### Federal Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:

<b>Federal Awarding Agency:</b>	U.S. Department of Housing and Urban Development
<b>Federal Funds Obligated to Subrecipient:</b>	\$11,021,919
<b>Catalog of Federal Domestic Assistance Title:</b>	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii
<b>Catalog of Federal Domestic Assistance Number:</b>	14.228
<b>Project Description:</b>	Funding is being provided for needed infrastructure improvements to benefit low- and moderate-income persons residing in the Subrecipient's jurisdiction.

*This is not a research and development award.*

### Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

#### Federal Program

1. The Subrecipient shall perform its obligations in accordance with Sections 290.0401- 290.048, F.S.
2. The Subrecipient shall perform its obligations in accordance with 24 C.F.R. §§ 570.480 – 570.497.
3. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
4. The Subrecipient shall perform the obligations in accordance with chapter 73C-23.0051(1) and (3), F.A.C.
5. The Subrecipient shall be governed by all applicable laws, rules and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient's Notice of Subgrant Award/Fund Availability (NFA).

**State Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:** *N/A*

**Matching Resources for Federal Programs:** *N/A*

**Subject to Section 215.97, Florida Statutes:** *N/A*

**Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows:**  
*N/A*

NOTE: Title 2 C.F.R. § 200.331 and Section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 and the Notice of Subgrant Award/Fund Availability be provided to the Subrecipient.

## Attachment J – Audit Compliance Certification

<p><i>Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.</i></p>	
<p>Subrecipient:</p>	
<p>FEIN:</p>	<p>Subrecipient's Fiscal Year:</p>
<p>Contact Name:</p>	<p>Contact's Phone:</p>
<p>Contact's Email:</p>	
<p>1. Did the Subrecipient expend state financial assistance, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and the Department of Economic Opportunity (DEO)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the above answer is yes, answer the following before proceeding to item 2.</p> <p>Did the Subrecipient expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If yes, the Subrecipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of Section 215.97, Florida Statutes and the applicable rules of the Department of Financial Services and the Auditor General.</b></p>	
<p>2. Did the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and DEO? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the above answer is yes, also answer the following before proceeding to execution of this certification:</p> <p>Did the Subrecipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If yes, the Subrecipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 C.F.R. part 200, subpart F, as revised.</b></p>	
<p><b>By signing below, I certify, on behalf of the Subrecipient, that the above representations for items 1 and 2 are true and correct.</b></p>	
<p>Signature of Authorized Representative</p>	<p>Date</p>
<p>Printed Name of Authorized Representative</p>	<p>Title of Authorized Representative</p>

	<b>Department of Economic Opportunity Subrecipient Enterprise Resource Application (SERA) Security Agreement / Confidentiality Form for Subrecipients</b>	All fields <b>MUST</b> be completed for access to be granted.
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**Section A – Requestor’s Information**

<p style="text-align: center; font-weight: bold;">User Contact Information</p> First Name: <u>Elly</u> Middle Name: <u>Soto</u> Last Name: <u>McKuen</u> Job Title: <u>Senior Project Manager</u> Phone Number: <u>239.949.6246</u> Fax Number: <u>239.949.6245</u> Email: <u>elly.mckuen@cityofbonitasprings.org</u>	<p style="text-align: center; font-weight: bold;">Primary Unit Information</p> Organization Name: <u>City of Bonita Springs</u> Address: <u>9101 Bonita Beach Road</u> City: <u>Bonita Springs</u> State: <u>FL</u> Zip: <u>34135</u> Region: <u>6</u> County: <u>Lee</u> Unit(s): <u>N/A</u>
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**Section B – Level of Access Requested**

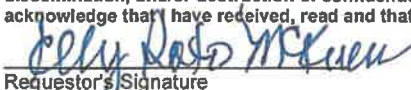

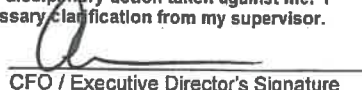
PROGRAM GROUP	PROGRAM	PROGRAM SPECIFIC	READ ONLY	FULL ACCESS	REASON FOR ACCESS
WORKFORCE	All Workforce Programs		<input type="checkbox"/>	<input type="checkbox"/>	
ESS			<input type="checkbox"/>	<input type="checkbox"/>	
	WAP	<input type="checkbox"/>			
	LIHEAP	<input type="checkbox"/>			
	CSBG	<input type="checkbox"/>			
CDBG			<input type="checkbox"/>	<input type="checkbox"/>	
	CDBG	<input type="checkbox"/>			
	CDBG – DR (List below)	<input checked="" type="checkbox"/>			Project Manager for the CDBG-DR Voluntary Buyout Program. Will be responsible for programmatic issues, reporting requirements
	DIG	<input type="checkbox"/>			
	DRG	<input type="checkbox"/>			

**Section C – Subrecipient Access Approval**

**Security / Confidentiality Agreement**

Your supervisor has authorized you to have access to sensitive data through the use of the Department of Economic Opportunity (DEO) information Systems and related media (i.e. printed reports, system inquiries, etc.). All confidential information, particularly Personally Identifiable Information (PII) are subject to the protection of federal, state and local laws and are to be protected accordingly. Unauthorized access, use, disclosure, modification, and/or destruction of confidential information is a crime under state and federal laws, including, but not limited to The Florida Computer Crimes Act, Chapter B15 Florida Statutes (F.S.) and Florida’s Unemployment Compensation Law, Chapter 443, F.S.

\*I certified that I have read the security/confidentiality statement printed above. I further certify and understand that unauthorized access, use modification, dissemination, and/or destruction of confidential information may be punishable as a crime and/or result in disciplinary action taken against me. I acknowledge that I have received, read and that I understand Chapter 815, F.S. and have received any necessary clarification from my supervisor.

 Requestor’s Signature	 Supervisor’s Signature	 CFO / Executive Director’s Signature
Elly Soto McKuen Print/Type Name      Date <u>5/15/2020</u>	Matt Feeney Print/Type Name      Date <u>5/15/2020</u>	Arleen Hunter Print/Type Name      Date <u>5/19/2020</u>

**Section D – DEO Authorization**

SERA ROLE _____	SERA PROFILE _____
DEO Program Approval	
Signature _____	Print Name _____ Date _____
DEO BFM Approval	
Signature _____	Print Name _____ Date _____
DEO Security Officer’s Approval	
Signature _____	Print Name _____ Date _____
DEO IT: Activated _____	Inactivated: _____
Date _____	Date _____

<b>Department of Economic Opportunity Subrecipient Enterprise Resource Application (SERA) Security Agreement / Confidentiality Form for Subrecipients</b>	All fields <b><u>MUST</u></b> be completed for access to be granted.
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**Section A – Requestor’s Information**

User Contact Information	Primary Unit Information
First Name: <u>Brenda</u> Middle Name: _____ Last Name: <u>Reetz</u> Job Title: <u>Contract Administrator</u> Phone Number: <u>239.949.6262</u> Fax Number: _____ Email: <u>brenda.reetz@cityofbonitasprings.org</u>	Organization Name: <u>City of Bonita Springs</u> Address: <u>9101 Bonita Beach Road</u> City: <u>Bonita Springs</u> State: <u>FL</u> Zip: <u>34135</u> Region: <u>6</u> County: <u>Lee</u> Unit(s): <u>N/A</u>

**Section B – Level of Access Requested**

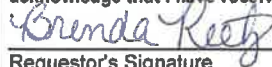
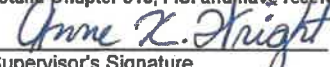
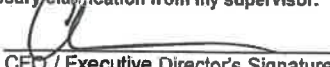
PROGRAM GROUP	PROGRAM	PROGRAM SPECIFIC	READ ONLY	FULL ACCESS	REASON FOR ACCESS
WORKFORCE	All Workforce Programs		<input type="checkbox"/>	<input type="checkbox"/>	
ESS			<input type="checkbox"/>	<input type="checkbox"/>	
	WAP	<input type="checkbox"/>			
	LIHEAP	<input type="checkbox"/>			
	CSBG	<input type="checkbox"/>			
CDBG			<input type="checkbox"/>	<input type="checkbox"/>	
	CDBG	<input type="checkbox"/>			
	CDBG – DR (List below)	<input checked="" type="checkbox"/>			Responsible for Financial reporting and requests for reimbursement
	DIG	<input type="checkbox"/>			
	DRG	<input type="checkbox"/>			

**Section C – Subrecipient Access Approval**

**Security / Confidentiality Agreement**

Your supervisor has authorized you to have access to sensitive data through the use of the Department of Economic Opportunity (DEO) Information Systems and related media (i.e. printed reports, system inquiries, etc.). All confidential information, particularly Personally Identifiable information (PII) are subject to the protection of federal, state and local laws and are to be protected accordingly. Unauthorized access, use, disclosure, modification, and/or destruction of confidential information is a crime under state and federal laws, including, but not limited to The Florida Computer Crimes Act, Chapter B15 Florida Statutes (F.S.) and Florida’s Unemployment Compensation Law, Chapter 443, F.S.

\*I certified that I have read the security/confidentiality statement printed above. I further certify and understand that unauthorized access, use modification, dissemination, and/or destruction of confidential information may be punishable as a crime and/or result in disciplinary action taken against me. I acknowledge that I have received, read and that I understand Chapter 815, F.S. and have received any necessary clarification from my supervisor.

 Requestor’s Signature	 Supervisor’s Signature	 CFO / Executive Director’s Signature
Brenda Reetz Print/Type Name      Date <u>5/18/20</u>	Ann Wright Print/Type Name      Date <u>5/15/20</u>	Arleen Hunter Print/Type Name      Date <u>5/19/2020</u>

**Section D – DEO Authorization**

SERA ROLE _____	SERA PROFILE _____
DEO Program Approval	
Signature _____	Print Name _____ Date _____
DEO BFM Approval	
Signature _____	Print Name _____ Date _____
DEO Security Officer’s Approval	
Signature _____	Print Name _____ Date _____
DEO IT: Activated _____	Inactivated: _____
Date	Date

## Attachment L

### 2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

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#### Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319](#), 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) [Davis-Bacon Act](#), as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the [Davis-Bacon Act](#) ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) [Contract Work Hours and Safety Standards Act](#) ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work

week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**(G)** [Clean Air Act \(42 U.S.C. 7401-7671q\)](#) and the [Federal Water Pollution Control Act \(33 U.S.C. 1251-1387\)](#), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the [Clean Air Act \(42 U.S.C. 7401-7671q\)](#) and the [Federal Water Pollution Control Act](#) as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H)** Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 ([3 CFR part 1986 Comp.](#), p. 189) and 12689 ([3 CFR part 1989 Comp.](#), p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

**(I)** Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**(J)** See [§ 200.322](#) Procurement of recovered materials. [[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014]

## Attachment M

### State of Florida Department of Economic Opportunity Federally-Funded Community Development Block Grant Disaster Recovery (CDBG-DR) Subrogation Agreement

This Subrogation and Assignment Agreement (“Agreement”) is made and entered into on this 17 day of June, 2020, by and between the City of Bonita Springs (hereinafter referred to as “Subrecipient”) and the State of Florida, Department of Economic Opportunity (hereinafter referred to as “DEO”).

In consideration of Subrecipient’s receipt of funds or the commitment by DEO to evaluate Subrecipient’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the DEO Community Development Block Grant-Disaster Recovery Program (the “CDBG-DR Program”) administered by DEO, Subrecipient hereby assigns to DEO all of Subrecipient’s future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-DR Program and that are determined in the sole discretion of DEO to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds, Subrecipient agrees to immediately notify DEO who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to DEO, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to DEO shall not exceed the amount received from the CDBG-DR Program.

Subrecipient agrees to assist and cooperate with DEO to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO. Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by DEO, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to DEO, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-DR Program, the Policies, any amounts received under the Disaster Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do,

or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

Subrecipient explicitly allows DEO to request of any company with which Subrecipient held insurance policies, or FEMA or the SBA or any other entity from which Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by DEO to monitor/enforce its interest in the rights assigned to it under this Agreement and give Subrecipient's consent to such company to release said information to DEO.

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to DEO, if Subrecipient received Grant Proceeds under the CDBG-DR Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to DEO, and DEO will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by DEO.
2. If the Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by DEO to reduce payments of the Grant Proceeds to the Subrecipient, and all Subsequent DOB Proceeds shall be returned to the Subrecipient.
3. If the Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by DEO.
4. If DEO makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, and this Agreement shall terminate.

Once DEO has recovered an amount equal to the Grant Proceeds paid to Subrecipient, DEO will reassign to Subrecipient any rights assigned to DEO pursuant to this Agreement.

Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

**Warning:** Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he\she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorney's fees.

**CITY OF BONITA SPRINGS**

By   
\_\_\_\_\_  
Signature  
**Peter Simmons**

Title Mayor

Date 6-17-2020

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

By   
\_\_\_\_\_  
Signature  
**Ken Lawson**

Title Director

Date 7/8/2020

*~ Remainder of this page is intentionally left blank ~*

**REQUESTED MOTION:** Adopt Resolution confirming the Selection Committee’s recommended ranking and authorize staff to negotiate with the top ranked consultant, StructurePoint, Inc. for the Goodwin Street Pedestrian and Drainage Improvement Project (RFQ#21-03).

**REQUESTOR:** Matt Feeney, Assistant City Manager; Elly Soto McKuen, Senior Project Manager

**AGENDA:** Consent

**STRATEGIC PRIORITY:** 1) Stormwater Management, 2) Transportation, 5) Community Aesthetics and 8) Economic Development

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**BACKGROUND:** Staff issued a Request for Qualifications (RFQ# 21-03) on March 14, 2021, for a qualified engineering consultant for design services for the Goodwin Street Pedestrian and Drainage Improvement Project. The City received nine (9) proposals on May 5, 2021 (submittal date).

The Selection Committee (Tony Backhurst, Neighborhood Services Director; Joel Langaney, Public Works Senior Project Manager; and Elly McKuen, Public Works Senior Project Manager) met on June 9 and 10, 2021, heard presentations, evaluated submittals, and recommended the following ranking: 1) American StructurePoint, Inc., 2) Q. Grady Minor, Inc., 3) DRMP, Inc. and 4) George F. Young, Inc.

The attached resolution confirms the ranking and authorizes staff to negotiate with the top ranked consultant, American StructurePoint, Inc. In the event an agreement cannot be reached with the top-ranked consultant, staff would proceed with the next ranked consultant.

**STAFF RECOMMENDATION:** Adopt resolution confirming the Selection Committee’s recommended ranking and authorize staff to negotiate with the top ranked consultant, StructurePoint, Inc. for the Goodwin Street Pedestrian and Drainage Improvement Project (RFQ#21-03).

**ATTACHMENT:**

1. Resolution
- 

**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: Matt Feeney

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

**CITY OF BONITA SPRINGS, FLORIDA**

**RESOLUTION NO. 21-**

RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA, AUTHORIZING STAFF TO NEGOTIATE A CONTRACT FEE WITH THE TOP RANKED FIRM, AMERICAN STRUCTUREPOINT, INC. FOR THE GOODWIN STREET PEDESTRIAN AND DRAINAGE IMPROVEMENT PROJECT UPON APPROVAL OF THE DOCUMENTS BY THE CITY ATTORNEY.

WHEREAS, on March 14, 2021, the City advertised for Request for Qualifications (RFQ 21-03) for the Goodwin Street Pedestrian and Drainage Improvement Project, and

WHEREAS, on May 5, 2021, the City received nine (9) proposals; and

WHEREAS the Selection Committee met on June 9 and 10, 2021 to evaluate, hear presentations, and form the recommendation of the following ranking of proposals:

Consultant	Consultant
1) American StructurePoint, Inc.	2) Q. Grady Minor, Inc.
3) DRMP, Inc.	4) George F. Young, Inc.
5) Weston & Sampson	6) HighSpans Engineering, Inc.
7) Hole Montes, Inc.	8) Agnoli Barber & Brundage, Inc.
9) AIM Engineering & Surveying, Inc.	

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida:

Section 1. The Selection Committee’s recommended ranking is hereby accepted and approved as written above.

Section 2. Staff is authorized to commence negotiations with the top-ranked firm, American StructurePoint, Inc. In the event that the parties are unable to reach an agreement, staff is authorized to terminate negotiations and proceed with the next ranked firm.

Section 3. This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 21st day of July 2021.

AUTHENTICATION:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney’s office

Vote:

Forbes	Steinmeyer
Gibson	Carr
Quaremba	Purdon
Corrie	

Date filed with City Clerk: \_\_\_\_\_

**REQUESTED MOTION:** Approve the amendment of the lease agreement with Creative Expressions Studio and Gallery, LLC for the use of Artist Cottage #4 for another one-year term

**REQUESTOR:** Nicole Perino, Parks and Recreation Director

**AGENDA:** Consent

**STRATEGIC PRIORITY:** #8 Economic Development

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**BACKGROUND:**

In 2006, City Council authorized staff to advertise a Request for Proposals (RFP) for Letters of Interest from artists and other similar type vendors for use of the six (6) historic fishing cottages at Riverside Park behind the Liles Hotels. The letters of interest were reviewed by the Art in Public Places board for the members to rank the six (6) top candidates to begin negotiations for a use agreement of each cottage. Since 2006, we have advertised a request for proposals for any vacant cottage that may be available for use. The intent of leasing the cottages to artists was to create an "artist village" that would enhance arts and culture in the downtown as well as encourage economic development in the area.

Creative Expressions Studio and Gallery, LLC would like to exercise their right to renew for another one-year term under the same terms and conditions. The agreement provides for hours of operation for special events, security, utilities, cancellation of lease, renewal option and insurance requirements. The agreement requires the artist to rent the premises for the sum of \$300.00 per month from October to May and \$200.00 per month from June to September, for the full term of the agreement.

**STAFF RECOMMENDATION:** Approve the amendment of the lease agreement with Creative Expressions Studio and Gallery, LLC for the use of Artist Cottage #4 for renewal of another one-year term.

**ATTACHMENTS:**

1. Lease Amendment
2. Original Agreement

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: Nicole Perino

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

**CITY OF BONITA SPRINGS  
RIVERSIDE PARK COTTAGE USE AGREEMENT  
COTTAGE NO. 4**

**THIS AGREEMENT** is made this 20th day of July, 2020, between the City of Bonita Springs, a Florida municipal corporation (hereinafter, the "City"), whose address is 9101 Bonita Beach Road, Bonita Springs, Florida 34135, and Creative Expressions Studio and Gallery, LLC (hereinafter, "Tenant"), whose address is 24851 Bay Cedar Dr., Bonita Springs, Florida 34134.

**WITNESSETH:**

**WHEREAS**, the City owns certain historic fishing cottages located at Riverside Park, 27300 Old US 41 Road, Bonita Springs, Florida 34135.

**WHEREAS**, it is an objective for City Council that the public is able to observe a "village" of artists and craftsmen in the park; and

**WHEREAS**, since 2006, the cottages have been leased to artists or other similar vendors in furtherance of this objective of hosting an artist village for public viewing; and

**WHEREAS**, Cottage No. 4 is currently available for tenancy; and

**WHEREAS**, in March of 2020, the City issued an advertisement requesting letters of interest from artists or other similar vendors for use of the Cottage No. 4 (RFP 20-05); and

**WHEREAS**, based upon the submissions received in response to RFP 20-05, the Art in Public Places Board has determined Tenant to be the most qualified bidder for tenancy of Cottage No. 4.

**NOW, THEREFORE**, in consideration of the mutual covenants and considerations contained herein, the parties agree as follows:

**GENERAL TERMS OF USE**

1. The City hereby agrees to lease unto Tenant the Cottage No. 4 located at Riverside Park, 27300 Old US 41 Road, Bonita Springs, FL 34135 (hereinafter, the "Premises") for the business use described in the proposal submitted by Tenant in response to RFP 20-05.
2. The City shall maintain and make all exterior and structural repairs to the Premises that are not made necessary by fault of Tenant, and maintain and repair all heating, ventilating and air-conditioning equipment, all wires, pipes, conduits and other equipment or facilities for supplying heat, light, power, hot and cold water services to the Premises, all drainage and waste pipes or facilities leading from the Premises, and those portions of all outside utility lines supplying the Premises (unless the utility lines are maintained or repaired by utility companies). The City shall not be liable to Tenant for damages, nor for abatement in rent, due to the City's failure to perform work under this Agreement. The provisions of this paragraph shall not apply to any of the installations that may be installed by Tenant as subsequently provided for herein.

3. The City shall furnish adequate electricity, air-conditioning, water and all utilities; Tenant shall be responsible for its telephone, high-speed internet connections, and DSL connections.
4. The City shall furnish its security system for the grounds (Diamond Investigations and Security) and provide individual locks for each unit. Any additional security measures and associated costs shall be the responsibility of the Tenant alone.
5. Tenant shall maintain and operate the art studio in a first-class manner, in accordance with the highest standards for art studios, in furtherance of education to the public of the particular genre of art.
6. Tenant and Tenant's employees shall be clean, courteous, and neat in appearance. Tenant shall not employ any person who will violate any of the nondiscrimination terms of this Agreement.
7. In the performance of this Agreement, Tenant shall not discriminate against any worker, employee, or any member of the public, because of race, creed, color, religion, age, sex or national origin, nor otherwise commit any unfair employment practice. Tenant shall take affirmative action to ensure that employees are treated during employment without regard to their race, creed, color, religion, age sex or national origin.
8. Tenant shall similarly furnish services connected with Tenant's business on a fair, equal and nondiscriminatory basis to all customers or users.
9. Tenant agrees to be open for business during organized special events. The City shall provide fifteen (15) days' notice of any such event. Other than the mandated hours of operations described in this paragraph, Tenant may decide when it is advantageous to have the studio open for public viewing.
10. Tenant shall maintain the Premises in a clean, neat and sanitary condition, maintaining adequate and suitable receptacles for trash and refuse within the cottage and its immediately surrounding areas. Tenant shall empty trash and refuse receptacles in the dumpster as designated by the Parks and Recreation Director.
11. Tenant shall not erect or install, nor permit to be erected or installed, any signs or other similar advertising device in or upon the Premises or the building without first obtaining the written consent of the Parks and Recreation Director.
12. Tenant shall make no alterations, additions nor replacements to the Premises without obtaining prior written consent from the Parks and Recreation Director. At the time of the request, Tenant shall specifically state whether the desired modification will require new electrical or plumbing connections or any changes in the existing equipment on or in the Premises.

13. Any alterations, additions or other improvements to the Premises shall become part of the City-owned realty upon termination of this Agreement, unless removed during the course of the Agreement with written consent from the Parks and Recreation Director.
14. Tenant shall maintain the Premises in good and working order and repair, including but not limited to, all trade fixtures and equipment, furnishings, utility connections and services, mechanical and electrical arrangements, janitorial and custodian services, painting and decorating of the interior of the Premises (subject to approval of the Parks and Recreation Director), and all other related services necessary to maintain the Premises in a good, safe and sanitary condition during the term of this Agreement. Maintenance shall be at Tenant's sole expense and shall be subject to general inspection by the City to ensure a continuing quality of maintenance, health, and safety standards established by the City.
15. In the event that the Premises are not maintained by Tenant to the standards required herein, the City may enter the Premises for the purpose of curing the default of Tenant, without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Premises by Tenant. Tenant agrees to pay the City all costs and expenses incurred through the curing any such default.
16. Tenant shall allow the City, or its authorized agents, access to the Premises at any reasonable hour for the purpose of inspecting or maintaining the Premises as required herein, or for any purpose necessary or connected with the exercise of its governmental functions. The City shall not be liable for any loss in business or damages of any nature to Tenant occasioned by the performance of the necessary work.
17. Tenant shall bear at its own expense all costs of operating its art studio and shall pay all other costs connected with the use of the Premises, including maintenance (except building structure, outside wall, and roof), insurance, taxes, janitorial services and supplies, and all permits and licenses required by law. TENANT SHALL ONLY USE TURPENOID AS THE CHEMICAL FOR THINNER, TURPENTINE, ETC., UNLESS NON-FLAMMABLE CHEMICALS ARE OTHERWISE AGREED UPON.
18. Tenant, Tenant's agents, all patrons and invitees, and any licensee of the Tenant shall have the right of ingress to and egress from the Premises without prior approval of the Parks and Recreation Director.
19. Tenant shall not assign, transfer, sublease, pledge, surrender, or otherwise encumber or dispose of the Premises, or any portion thereof, nor permit any other person(s), company or corporation to occupy the Premises, without first obtaining the written consent of City Council.

20. Tenant shall observe and obey all laws, ordinances, regulations and rules of the federal, state, county, and municipal governments that may be applicable to its operations. Tenant shall obtain and maintain all necessary permits and licenses for its operations. Tenant agrees to observe and obey any reasonable rule or regulation pertaining to the use of the building or related facilities that the City may adopt and enforce during the term of this Agreement.

#### **TERM, RENT, RENEWALS & TERMINATION**

21. The Term of this Agreement shall be for a period of one (1) year commencing on the date first written above, unless otherwise terminated or extended as provided for herein.
22. Tenant shall pay the City a sum of \$300.00 per month as Rent for the Premises from October through May, and a sum of \$200.00 per month as Rent for the Premises from June through September, due and payable on the first day of each month for the full term of this Agreement.
23. Tenant shall have the option for renewal of this Agreement so long as Tenant is not in default of any provision hereunder at the time of such election. Tenant shall provide written notice of election to renew not less than three (3) months prior to the expiration of the current term of the Agreement (original or extended). If Tenant opts to renew, the Agreement may be automatically renewed for subsequent one (1) year terms up to a maximum of three, upon all of the same terms, provisions, and conditions set forth in this Agreement.
24. In the event that Tenant holds over and remains in possession of the Premises after the expiration of this Agreement without any written renewal of the Agreement, that holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month that may be terminated at any time by the City.
25. This Agreement shall be subject to cancellation by the Tenant in the event of any of the following events:
- a. The permanent abandonment of Riverside Park facility.
  - b. The lawful assumption by the United States government, or its authorized agency, of the operation, control or use of the park, or any substantial part of the park, so as to substantially restrict Tenant's use of the Premises for a period of at least ninety (90) days.
  - c. Issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of the Premises or of Riverside Park, and which remains in force for a period of at least ninety (90) days.

- d. The default by the City in the performance of any covenant or provision herein required and the failure of the City to remedy that default within ten (10) days of receipt of written notice from Tenant demanding remedy of such default.
  - e. Upon ninety (90) days' written notice from Tenant or City.
26. Upon the termination of this Agreement by lapse of time or otherwise, except for Tenant's default, Tenant shall have the right to remove, or shall be obliged to remove upon direction from the City, all equipment, fixtures, and personal property installed by Tenant or located within the Premises (but not pipes, conduit, and wiring that Tenant may have installed and that may be affixed to or imbedded in walls, ceilings or floors). Tenant shall have thirty (30) days to remove any equipment and fixtures and personal property, and to fully restore the Premises to the condition in which it existed at the time that Tenant took possession, ordinary wear and tear excepted. After thirty (30) days, Tenant shall be deemed to have abandoned any equipment, fixtures, or personal property remaining in or on the Premises.
27. Upon the termination of this Agreement, Tenant shall have no further right to or interest in any of the leasehold improvements installed by Tenant.
28. At the expiration or termination of this Agreement, Tenant shall peaceably deliver possession of the Premises to the City in as good order and condition as it existed at the time that Tenant took possession, reasonable use and wear excepted.

#### **DAMAGE OR DESTRUCTION OF PREMISES**

29. If the Premises are damaged by fire, explosion, natural elements, the public enemy, or other casualty, but not rendered untenable, the Premises may be repaired promptly by the City at the City's expense. If the damage is so extensive as to render the Premises untenable and, in the City's judgment, cannot be repaired within ninety (90) days from the date that the damage occurred, the City may terminate this Agreement effective as of the date of the damage by giving Tenant written notice within thirty (30) days of the date that the damage occurred.
30. If the City does not terminate the Agreement as provided for in the paragraph above, the City shall promptly repair and restore the Premises to the condition in which it existed when originally delivered to the Tenant, and the rent payable shall completely abate from the date that the damage occurred until the Premises are substantially restored and is tenable. If the Premises are not repaired or reconstructed within one hundred and twenty (120) days after the damage occurred, absent good cause, Tenant may give the City written notice of its intention to cancel the Agreement in its entirety as of the date of the damage.

## **REQUIRED INSURANCE & INDEMNIFICATION**

31. Property Insurance. Tenant shall procure and keep in force a property insurance policy with special perils coverage upon its leasehold improvements, furniture, furnishings, fixtures and equipment, and business personal property to their full insurable value and shall provide the City with evidence that coverage has been procured and is being maintained in full force.
  
32. Workers' Compensation Insurance. The Tenant shall maintain workers' compensation insurance covering any employee whether part time, full time or casual in nature as required under Florida Statutes, including Employers' Liability Limit of \$500,000. If the owner(s) and or officers are not permitted to a legal exemption, they shall also be covered as any other employee.
  
33. Liability Insurance. The Tenant shall maintain, throughout the term of this Agreement, a commercial general liability insurance policy with coverage limits of \$1,000,000 bodily injury or property damage liability for each occurrence and \$2,000,000 in the aggregate. Coverage shall include a least \$50,000 fire legal liability and include products and completed operations. It is understood that the specified amounts of insurance in no way limits the liability of Tenant and that Tenant shall carry insurance in amounts so as to indemnify the City from all claims, suits, demands and actions. Tenant shall add the City as an additional insured including products and completed operations, and provide a certificate of insurance at the commencement of the lease and as often as requested by the City. Coverage shall be provided by an insurance carrier acceptable to the City.
  
34. Indemnification. To the fullest extent permitted by law, the Tenant shall indemnify and hold harmless the City, its consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the Tenant's fulfillment of this Agreement or the use of the Premises, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, pollution, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Tenant, the Tenant's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified here under, except for gross negligence by the City.

## **TENANT DEFAULT & LIABILITY**

35. Each of the following events shall constitute an Event of Default hereunder:
  - a. Tenant's failure to pay when due any installment of rent and such failure continues for a period of ten (10) days after the due date, without any notice or demand being required.

- b. Tenant's failure to perform or observe any other covenant, condition or other obligation of Tenant and such failure continues for a period of ten (10) days after Tenant receives written notice thereof.
  - c. The Premises become vacant and unoccupied for more than thirty (30) days.
36. Upon the occurrence of an Event of Default by Tenant that is not cured by Tenant within the applicable grace period specified above, the City or its agents or employees may immediately or at any time thereafter re-enter the Premises and remove Tenant, its agents, employees, licensees, and any other persons and all or any of its property from the Premises, either by summary dispossession proceedings or by any suitable action or proceedings at law or in equity or by force, self-help or otherwise, without being liable to indictment or prosecution of damages therefor, and repossess and enjoy the Premises, together with all alterations, additions, and improvements to the Premises.
37. The City's exercise of any of its remedies or its receipt of Tenant's keys shall not be considered an acceptance or surrender of the Premises by Tenant. A surrender must be agreed to in writing and signed by both parties.
38. In case of any termination, re-entry, or dispossession by summary proceedings or otherwise, the Rent and all other charges required to be paid up to the time of such termination, re-entry, or dispossession, shall be paid by Tenant, and Tenant also shall pay to the City all expenses which the City may then or thereafter incur for legal expenses, reasonable attorney's fees, and all other costs paid or incurred by the City as the result of such termination, re-entry, or dispossession, for restoring the Premises to good order and condition and for altering and otherwise preparing the Premises for reletting. The City may, but shall have no obligation, at any time relet the Premises, in whole or in part, for any rental then obtainable for a term that, at the City's option, may be for the remainder of the then current term of this Agreement or for any longer or shorter period.
39. Tenant shall remain liable to the City for damages in an amount equal to the Rent and other sums which would have been owing by Tenant hereunder for the balance of the Term had this Agreement not been terminated, less the net proceeds, if any, of any reletting of the Premises by the City after such termination, after deducting all of the City's expenses in connection with such recovery of possession or reletting. The City shall be entitled to collect and receive such damages from Tenant on the days on which the Rent and other amounts would have been payable if this Agreement had not been terminated. Alternatively, at the option of the City, the City shall be entitled to accelerate and declare the entire remaining unpaid Rent for the balance of the term to be immediately due and payable. The City shall be entitled to recover forthwith from Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Agreement, represents the present value of the aggregate of the Rent and other sums payable by Tenant hereunder that would have accrued for the balance of the term.

40. The City's rights and remedies set forth herein are cumulative and are in addition to the City's other rights and remedies at law or in equity or otherwise. The City's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy.
41. The City's delay or failure to exercise or enforce any of the City's rights or remedies or Tenant's obligations shall not constitute a waiver of any such rights, remedies or obligations. The City shall not be deemed to have waived any default unless such waiver expressly is set forth in an instrument signed by the City. Any such waiver shall not be construed as a waiver of any covenant or condition except as to the specific circumstances described in such waiver.
42. Neither Tenant's payment of an amount less than a sum due nor Tenant's endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction. Notwithstanding any request or designation by Tenant, the City may apply any payment received from Tenant to any payment then due. The City may accept the same without prejudice to the City's right to recover the balance of such sum or to pursue other remedies.

#### **MISCELLANEOUS PROVISIONS**

43. Force Majeure. The performance of all covenants contained here (except for the payment of rent which shall be paid if otherwise provided for herein), shall be postponed and suspended during any such period that performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration of existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business there, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order of request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction, inability to secure labor or adequate supplies of materials, products or merchandise or any other delay or contingency beyond the reasonable control of the City or Tenant.
44. Independence of the Parties. It is understood and agreed that nothing contained herein is intended or should be construed as creating or establishing the relationship of copartners between the parties, or as constituting either party as the agent, representative, or employee of the other party for any purpose. Tenant is and remains an independent contractor with respect to all services performed under this Agreement.

- 45. Notices. Notices required herein shall be hand-delivered or sent via certified mail addressed to the respective addresses first written above. Notices to the City shall be addressed to the attention of the Parks and Recreation Director.
- 46. Nonrecording. Tenant shall not cause or allow this Agreement or any memorandum or disclosure thereof to be recorded or filed in any public land or other public records of any jurisdiction, and any attempt to do so may be treated by the City as a breach of this Agreement.
- 47. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall remain in effect and shall be enforceable to the full extent permitted by law.
- 48. Waiver of Jury Trial. EACH PARTY HEREBY KNOWINGLY AND VOLUNTARILY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY.
- 49. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. It is further agreed that the venue for any legal or equitable action between the parties relating to this Agreement shall be in the courts of appropriate jurisdiction in Lee County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

Jeanni Burgwald, Creative Expressions Studio and Gallery, LLC

By: Jeanni Burgwald

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

Attest:

By: Debra Schepch  
City Clerk

CITY OF BONITA SPRINGS

By: Peter Simmons  
Mayor Peter Simmons

**CITY OF BONITA SPRINGS  
RENEWAL OF RIVERSIDE PARK COTTAGE USE AGREEMENTS  
COTTAGE NO. 4**

This Renewal of a lease agreement dated July 20, 2020, is made and entered into this 21<sup>st</sup> day of July 2021 between the CITY OF BONITA SPRINGS, a municipal corporation of the state of Florida ("*lessor*"), and Creative Expressions Studio and Gallery, LLC, 24851 Bay Cedar Dr., Bonita Springs, FL 34134 ("*lessee*").

WHEREAS, the City and Lessee enter into an agreement for use of a Riverside Park Artist Cottage.

WHEREAS, it is in the public interest to amend the Agreement dated July 20, 2020, attached hereto as Exhibit "A" to continue the services for another one-year period under the same terms and conditions.

NOW, THEREFORE, inconsideration of the above premises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the City and Lessee hereby agree to extend the Agreement as follows:

1. The recitals as set forth above are incorporated into the terms of this agreement as if set out herein at length.
2. Section V (B), Renewing Terms, is hereby extended in an increment of one year, to July 20, 2022.
3. All of the remaining terms in Exhibit "A", the Agreement, attached hereto, remain the same.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed Said Agreement is to become effective and operative upon filing with the City Clerk.

Lessee: \_\_\_\_\_  
Print name

By: \_\_\_\_\_  
Sign name

AUTHENTICATION:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney's Office

Date filed with City Clerk: \_\_\_\_\_

**REQUESTED MOTION:** Update by Capitol Strategies on the 2022 Legislative Session and discussion of City's Legislative Priorities.

**REQUESTOR:** Arleen M. Hunter, City Manager

**AGENDA:** Presentations

**STRATEGIC PRIORITY:** 1) Improve Storm Water Management, 2) Transportation, 3) Strengthen City Finances, 4) Environmental Protection, and 7) Government Transparency

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**BACKGROUND:** Lobbyists Carole Green and Ashley Stacell will be present at Wednesday's meeting to provide Council with an update on the upcoming legislative session. Attached are the 2020/2021 Legislative Priorities for Council's information and discussion.

Following the discussion, staff is seeking direction from City Council regarding the alteration or confirmation of the City's Legislative Priorities in order to timely submit to the Legislative Delegation prior to their meeting on August 18, 2021.

**STAFF RECOMMENDATION:** Council's pleasure.

**ATTACHMENTS:** 2020-2021 Legislative Priorities  
Short List of Legislative Funding Projects 2020  
Memorandum from Representative Spencer Roach, Chairman, Lee County Legislative Delegation

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director:

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_



## **2020-21 City of Bonita Springs Legislative Priorities**

- 1. The City of Bonita Springs supports funding for flooding reduction/mitigation projects within its municipal boundaries.**
- 2. The City of Bonita Springs supports State sustainability initiatives, especially those which would prevent discharges from Lake Okeechobee and which promote clean fresh and salt water bodies. The City also opposes any water quality proposals which would negatively impact our City.**
- 3. The City of Bonita Springs supports flooding reduction mitigation projects within our municipality and improvements to water quality.**
- 4. The City of Bonita Springs supports State funding for projects which would advance enhanced transportation connectivity for pedestrian and bicyclists as well as design and construction of additional "complete" streets.**
- 5. The City of Bonita Springs believes in affordable insurance rates for our citizens. Towards that end, the City opposes any action or legislation, at any governmental level, that will have the effect of significantly increasing flood insurance rates.**
- 6. The City of Bonita Springs supports efforts to provide State funding for local acquisition of preservation lands in the Density Reduction Groundwater Resource (DR/GR) areas of the City.**
- 7. The City of Bonita Springs opposes any effort to allow fracking in and around the Southwest Florida area.**
- 8. The City of Bonita Springs supports legislation that would allow pari-mutuel facilities within counties that have passed referendums to provide slot gaming.**
- 9. The City of Bonita Springs supports implementation of the legislatively required study to determine hydrological boundaries of the Big Cypress Basin resulting in a larger district that includes the portion of Lee County within the watershed.**



***More GENERALLY, the City of Bonita Springs supports increased state funding for education (private, public and charter schools) and supports State sustainability initiatives including possible alternative sources of power and opposes any legislation that would pre-empt Home Rule protection.***

CITY OF BONITA SPRINGS, FLORIDA  
PROPOSED SHORT LIST OF LEGISLATIVE FUNDING PROJECTS – 2020

1. Imperial Bonita Estates, Quinn, Downs, and Dean Street west of Imperial Parkway Home Elevation and Buyout Program: This ongoing Project's goal is to ensure that Bonita Springs residents are out of "Harms Way" when it comes to structure flooding. As we have previously shared with our Legislative Delegation, the neighborhoods along Imperial Parkway and Bonita Beach Road have experienced repetitive riverine flooding with the most recent events occurring in 2008 during Tropical Storm Faye and in the fall of 2017 with the arrival of Hurricane Irma. Structure flooding, in both instances, persisted for 4 weeks or longer. The project would provide funding to assist in elevating effected homes, as well as assist in home buyout. The City has already invested City funds in the amount of \$141,000 in storm water modeling studies of the area; and has leveraged the results of those studies in developing successful grant awards for the design & construction of infrastructure projects totaling \$11 Million. In addition, the City has received \$5million for its ongoing home buyout program. The scale of the flooding problem necessitates that the City pursue multiple solutions, as infrastructure alone will not remedy the problem, and there remains a funding shortfall for the City's voluntary home buyout program. This funding request will assist the City in the development of demonstration home elevation projects as well as provide a subsequent source for the home buyout program. The City of Bonita Springs is respectfully requesting \$300,000 in funding for the home buyout/elevation project and has allocated a 50% match of \$300,000 for the project.
  
2. Septic tank conversion to sanitary sewer; The City of Bonita Springs will coordinate with Bonita Springs Utilities on septic tank conversion projects as funding opportunities become available that meet water quality improvement standards, (costs to be determined on a project basis).

# Lee County Legislative Delegation

Founded 1886



CITY OF FORT MYERS	1885
CITY OF CAPE CORAL	1970
CITY OF SANIBEL	1974
TOWN OF FORT MYERS BEACH	1995
CITY OF BONITA SPRINGS	1999
VILLAGE OF ESTERO	2015



SENATOR BEN ALBRITTON  
SENATOR KATHLEEN PASSIDOMO  
SENATOR RAY RODRIGUES

REPRESENTATIVE SPENCER ROACH  
REPRESENTATIVE JENNA PERSONS-  
MULICKA  
REPRESENTATIVE MIKE GIALLOMBARDO  
REPRESENTATIVE ADAM BOTANA

CHAIR  
VICE  
CHAIR

## MEMORANDUM

**TO:** All Agencies of Local Government, Interested Parties and SW Florida Media  
**FROM:** Representative Spencer Roach, Chairman, Lee County Legislative Delegation  
**SUBJECT:** Lee County Legislative Delegation Meeting and Public Hearing  
**DATE:** June 18, 2021  
**Cc:** Members, Lee County Legislative Delegation

The Lee County Legislative Delegation Meeting has been set for Wednesday, August 18<sup>th</sup>, 2021 in the Nursing Building (Room AA-177) at Florida Southwestern State College. The meeting is scheduled to begin at 9:00am until 5:00pm, or upon completion of the agenda and public comment. The Delegation will conduct local business including a public hearing on local bills (if filed), funding requests and other issues for which people may have registered to speak.

The deadline for submitting local bills to the Delegation is 5:00pm on Friday, August 6<sup>th</sup>, 2021. All local bills must be accompanied by completed paperwork required by the Florida Legislature, including original signatures of the legislative sponsors, and should be forwarded to Representative Roach at 3436 Marinatown Lane STE 6, North Fort Myers, FL 33903.

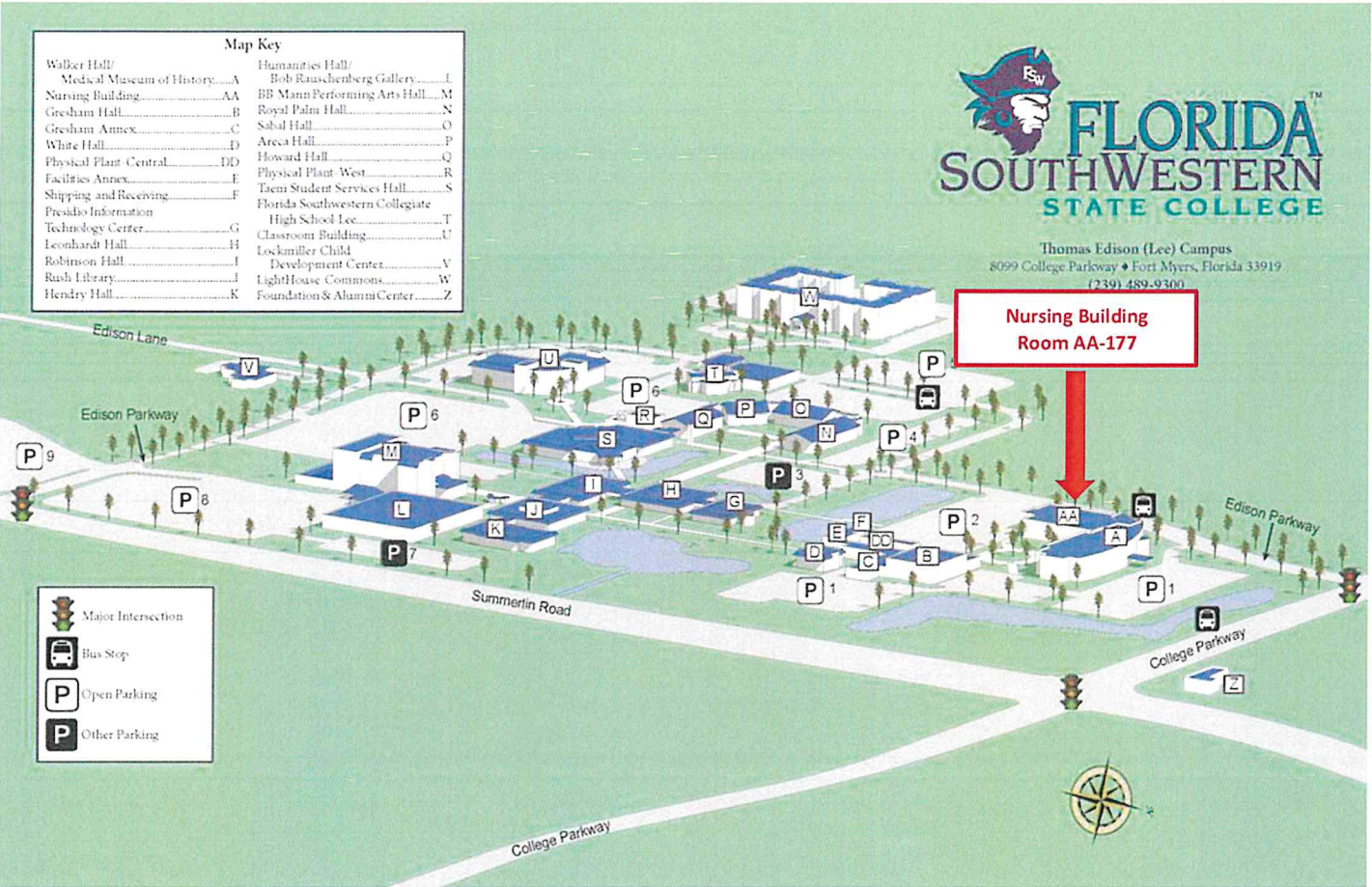
Requests for placement on the meeting agenda must be submitted either via electronic mail to [brandon.miller@myfloridahouse.gov](mailto:brandon.miller@myfloridahouse.gov) or in writing to State Representative Spencer Roach, Chairman, Lee County Legislative Delegation, 3436 Marinatown Lane STE 6, North Fort Myers, FL 33903, no later than 5:00pm on Friday, August 6<sup>th</sup>, 2021. Requests made by electronic mail will be acknowledged within two (2) days of receiving the request.

Presenters who wish to provide supporting materials to the Delegation must **submit by electronic mail** by 5:00pm on Friday, August 6<sup>th</sup>, 2021. Those who wish to submit materials must provide four physical copies, which must be printed on letter-size paper, three-hole punched at the left margin, and sent via certified mail to the district office at 3436 Marinatown Lane STE 6, North Fort Myers, FL 33903. These copies must be no more than five pages, front-only. These materials will also be available for the public on the delegation website ([www.leedelegation.com](http://www.leedelegation.com)).

The deadline to register to make a general presentation (not related to local bills) to the Delegation is also 5:00pm on Friday, August 6<sup>th</sup>, 2021. All requests for time on the agenda must be submitted in writing via email to [brandon.miller@myfloridahouse.gov](mailto:brandon.miller@myfloridahouse.gov). The agenda for the meeting will be set by Friday, August 13<sup>th</sup>, and will be changed only to accommodate unforeseen emergencies.

For more information, please contact Brandon Miller, Legislative Assistant to Representative Roach, at [Brandon.Miller@myfloridahouse.gov](mailto:Brandon.Miller@myfloridahouse.gov).

All meetings of the Lee County Legislative Delegation are open to the public.



**REQUESTED MOTION:** Appoint one member to the Outreach Advisory Committee.

**REQUESTOR:** Jesse Purdon, Council Member District #2

**AGENDA:** Mayor and Council Items

**STRATEGIC PRIORITY:** #7 Government Transparency: Increase Outreach/Accessibility to citizens.

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**BACKGROUND:**

On April 19, 2017, City Council adopted a resolution to establish the Outreach Committee. The Committee will provide input to the City Council regarding issues affecting participation in the City of Bonita Springs by recommending programs and special events to achieve community-wide participation.

On February 18, 2018, City Council modified the committee to change the one ex-officio member to a regular member increasing the membership to eight. On March 21, 2018, City Council amended to add an additional member bringing total membership to nine.

The committee is approved for nine (9) members. The committee currently has eight appointed members.

Mr. Angel Cerritos and Mr. Michael Danieli have expressed interest in serving on the committee.

This appointment will bring the committee to full participation.

**STAFF RECOMMENDATION:** Approve appointment of member to the Outreach Advisory Committee.

**ATTACHMENTS:**

1. Angel Cerritos application and resume
2. Michael Danieli application
3. Resolution to appoint one new member

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director: Lora Taylor

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

**APPLICATION TO  
SERVE ON  
ADVISORY COMMITTEE**  
(PLEASE TYPE OR PRINT)

PLEASE BE ADVISED THAT ALL INFORMATION CONTAINED IN THIS APPLICATION BECOMES PUBLIC RECORD ONCE SUBMITTED TO  
CITY OF BONITA SPRINGS

Note: Applications will be kept on file and active for a period of two years from date received.

City Council District # \_\_\_\_\_

DATE: 5/19/2021 \_\_\_\_\_

<b>PLEASE COMPLETE ALL SECTIONS</b>		
<b>NAME:</b> Cerritos	Angel	
<b>Last</b>	<b>First</b>	<b>Middle Initial</b>
<b>RESIDENCE ADDRESS:</b>		
23201 Shady Oak Ln	Estero	33928
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
<b>BUSINESS ADDRESS:</b>		
27200 Kent Rd.	Bonita Springs	34135
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
<b>MAILING ADDRESS:</b>		
27200 Kent Rd.	Bonita Springs	34135
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
<b>PHONE NO.</b> 239-221-7560	<b>Home</b>	<b>CELL PHONE #</b> 703-888-7712
	<b>Business</b>	
<b>E-MAIL ADDRESS:</b> acerritos@skyyymca.org		
<b>FAX:</b>		

I hereby submit my name for consideration to serve in an advisory capacity to the City of Bonita Springs on the following Advisory Committee:

NAME OF ADVISORY COMMITTEES

**OCCUPATION:** Executive Director for Bonita Springs YMCA

**CIVIC/PROFESSIONAL ACCOMPLISHMENTS/OFFICES HELD:**

Rotary Club member, Subcommittee Chair for community organizations for the 2020 census committee,

Board member of the Loudoun County Chamber of Commerce and the Loudoun Credit Union.

Do you reside in Bonita Springs?

- Yes  
 No

Address: \_\_\_\_\_

**APPLICATION TO SERVE ON A  
CITY OF BONITA SPRINGS ADVISORY COMMITTEE – CONTINUED**

**My qualifications to be eligible are as follows:**

As the executive director for the Bonita Springs YMCA and 17 year career with the YMCA I have had the opportunity to be involved with several community organizations and committees in an effort to advocate for children, families and overall community residents which can add value to the City of Bonita Springs advisory committee. Additionally, I am bilingual in Spanish and English.

**If applicable, please indicate any employment, contractual relationship or status that you may have, or have had within the past 12 months, with any private business entity that rents, leases or sells any realty, or provides any goods or services to the City or that is conducting any business with the City.**

N/A

**If you have previously served on a City of Bonita Springs Advisory Committee or are currently serving and seeking reappointment, please indicate the number and general nature of any voting conflict disclosure memorandum filed (Form 8B) while serving on the committee:**

N/A

**If applicable, attach a résumé of additional personal and professional qualifications and experience that pertains to the above.**

**I understand that:**

- 1.) **Some of the Boards and Committees appointed by the City Council are required to comply with Chapter 112, Florida Statutes, the Financial Disclosure Law and you may be required to file a Form 1 Financial Disclosure.**
- 2.) **City of Bonita Springs, an equal opportunity/affirmative action employer, considers the selection and appointment of persons to advisory committees in a non-discriminatory manner consistent with the requirements of Federal, State and Local non-discrimination laws.**

*Angel Cerritos*

Signature

5/19/2021

Date

**PLEASE RETURN THIS COMPLETED FORM TO:**

**CITY OF BONITA SPRINGS  
ADVISORY COMMITTEES  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FL 34135**



## Angel Cerritos

standards.

### Major Accomplishments

- Increased fundraising efforts by 14% in 2018 and by 21% in 2019.
- Increased board efficiency by: increasing the advisory board to 12 members, implemented board committees and introduced Boardable (a board tool to centralized communication, increase board member engagement and increase board efficiency).
- Developed new partnerships that supported fundraising and expansion of Y programs.
- Exceeded budget expectations 2 years in a row from 2018-2019.
- Played a major role in helping to secure a \$52,000 county grant to support scholarships.

---

October 2016-September  
2017

YMCA of Metropolitan Washington  
YMCA Ayrilawn Branch

### **Associate Executive Director**

Responsible for overseeing the daily operations of a \$3.2 million branch as well as working very closely with the associate of the full facility sister branch (YMCA Bethesda-Chevy Chase) to ensure we share resources and provide quality services to the shared members and community.

- Provide leadership to 130+ staff members (6 direct reports).
- Manages all operations to include summer day camp (largest camp within the Association), school age, early learning, gymnastics, dance, sports, enrichment programming, facilities, etc.
- Directs strategic planning efforts and develops the annual operating plan of the branch.
- Develop community relationships to support branch goals and objectives to include fundraising efforts.

### Major Accomplishments

- Secured a \$30K donation which allowed up to 15 kids from the local shelter to attend summer camp.
- Achieved 103% of camp budget within the 1<sup>st</sup> year overseeing the branch which had a -\$100,000 deficit the prior year.
- Was selected to be the Co-Chair for Thingamajig Invention Convention (the Association's largest event which inspires over 4,000 kids in the DC area to find a passion for creativity and STEAM).
- Exceeded the Month of Giving goal which supports the annual campaign. Reached 302%.
- Reduced AR balances by 70% within 3 months by implementing new processes and procedures.
- Increased marketing efforts through social media, direct mail, Google ads, grassroots marketing, etc. to increase visibility and enrollment.
- Drastically increased family engagement by introducing the 1<sup>st</sup> Family STEAM Night, improving communication, and implementing various retention efforts.

---

June 2013-September  
2016

YMCA of Metropolitan Washington  
YMCA Loudoun County Branch

### **Associate Executive Director**

Responsible for the daily operations of the YMCA Loudoun County branch which has a budget of \$1.7 million and 80+ staff members. Responsible for delivering intentional programming with a major focus on youth development and licensed childcare, facilitating staff development strategies and direct leadership for the annual support campaign for the branch.

- With the Branch Executive Director, lead the strategic positioning of the branch to meet the goals of the Association-wide strategic plan.
- Responsible for developing and monitoring the branch budget.
- Recruit, train, and motivate staff members to ensure program quality is achieved.

### Major Accomplishments

- Closed out the 2013 and 2014 fiscal year \$100,000 ahead of budget by monitoring expenses and identifying new revenue streams. Secured a new program for 2014 which will yield an additional \$50,000 in revenue.

## Angel Cerritos

- Exceeded 2015 budget goals by \$50,000.
- Was selected as the School Age Chair for the Association.
- Played a significant role in acquiring a new youth development center in 2016 which increased the families served in the community.

---

March 2012-June 2013

YMCA of Metropolitan Washington

YMCA Loudoun County Branch

### **Sr. Program Director**

Responsible for overall operation of up to 15 offsite after school and camp programs. Responsible for assuring that high standards are met in the areas of quality control, program development and growth, and safety. Oversee staff involved in delivering quality after school and camp programs and worked with appropriate directors to recruit, motivate and retain outstanding staff, while ensuring that everyone meets federal, state, and local (as well as YMCA of the USA recommended) standards and certifications.

- Provide leadership to 70+ staff members.
- Responsible for identifying program growth opportunities.
- Responsible for developing and maintaining great relationship with 15+ county schools and its administration
- Provide training on VA State Licensing requirements, curriculum development, etc.

### **Major Accomplishments**

- Was instrumental in meeting and exceeding budget for the branch. Was responsible for opening and operating 2 new programs which increased the branch revenue from \$1.1 million to \$1.2 million.
- Became the number 1 branch in the Association with the highest revenue in school age programs.

### **Education**

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University of Phoenix

Bachelors of Science in Business Management

### **Community Involvement**

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- Board of Director for the Loudoun County Chamber of Commerce
- Board of Director for the Rotary Club of Ashburn
- Board of Director for the Loudoun Credit Union
- Loudoun 40 Under 40 Honoree 2019
- 2019 Leadership Loudoun Graduate
- Loudoun Human Services Network
- Subcommittee Chair for the 2020 Census (selected by Chair Randall, Loudoun County Board of Supervisors Chairwoman)
- Member of the Bonita Naples Rotary Club
- 2021 Leadership SWFL Inc. Graduate

### **References**

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- Additional references are available upon request.

Rec'd 10-21-2020

APPLICATION TO  
SERVE ON  
ADVISORY COMMITTEE  
(PLEASE TYPE OR PRINT)

PLEASE BE ADVISED THAT ALL INFORMATION CONTAINED IN THIS APPLICATION BECOMES PUBLIC RECORD ONCE SUBMITTED TO  
CITY OF BONITA SPRINGS

Note: Applications will be kept on file and active for a period of two years from date received.

City Council District # 6

DATE: 10/13/2020

PLEASE COMPLETE ALL SECTIONS		
NAME:	<u>Danieli</u>	<u>Michael</u>
	<u>C.</u>	
	<b>Last</b>	<b>First</b>
		<b>Middle Initial</b>
RESIDENCE ADDRESS:		
<u>28072 Cavendish Ct.</u>	<u>Unit 2201</u>	<u>Bonita Springs, FL 34135</u>
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
BUSINESS ADDRESS: <u>NA</u>		
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
MAILING ADDRESS: <u>same</u>		
<b>Street</b>	<b>City</b>	<b>Zip Code</b>
PHONE NO.	CELL PHONE #	<u>518 469-6479</u>
	<b>Home</b>	<b>Business</b>
E-MAIL ADDRESS: <u>MCDconsult1@gmail.com</u>		
FAX:		

I hereby submit my name for consideration to serve in an advisory capacity to the City of Bonita Springs on the following Advisory Committee:

Outreach Advisory Committee

NAME OF ADVISORY COMMITTEES

OCCUPATION: Retired

CIVIC/PROFESSIONAL ACCOMPLISHMENTS/OFFICES HELD:  
see attached

Do you reside in Bonita Springs?  Yes  No Address: 28072 Cavendish Ct. #2201  
Bonita Springs, FL 34135

## Community Service

### Diverse Volunteerism & Community/ Organizational Leadership

- **Capital Region Sports Foundation** (Albany NY) Board of Directors 1998 – 2004  
**Create promotion and opportunities for sports teams in Albany, Schenectady and Troy - upstate NY.**
- **Seton Health / Northeast Health** (Troy, NY): Chairman of the Foundation Board of Directors, Executive Committee, 2004 – 2007 Capital Campaign Steering Committee (2015-2018)  
( Presently Board Director Emeritus)
- **Hudson Valley Community College** (Troy, NY): Foundaton Board of Directors, 2005-2012;  
Chairman of the Board, 2008- 2012
- **New York Newspapers Advertising and Marketing Executives** (Albany, NY): Board of Directors, 2003-2006; President, 2003-2005
- **Vanderheyden Hall** (Troy, NY): Board of Directors, 2003-2008; President, 2005-2008
- **Albany Symphony Orchestra** (Albany, NY): Board of Directors, 2000-2005
- **Albany Colonie Regional Chamber of Commerce** (Albany, NY): Board of Directors, Tech Valley Strategic Planning Team, 2001-2004
- **Country Club of Troy** (Troy, NY) Board of Governors, Executive Committee, 2001-2004 (House Chairman 2002-2004)
- **Ronald McDonald House** (Albany, NY): Board of Directors, 2001-2003
- **Rensselaer County Chamber of Commerce** (Troy, NY): Board of Directors 2002-2005. Golf and Marketing Chair. 2001-2004
- **Worthington County Club (Bonita Springs, FL.) Master Board 2016-January 2020**  
**Master Board President 2017 – January 2020. (First three year president)**  
**Served as General Manger / COO December 2017 -May 2018.**

## **Professional Executive Summary:**

Having been a very active member within my communities of Troy and Albany, New York over the past 42 years, I'm looking forward to continuing my community service in the Bonita Springs, Naples area. To that end, I want to call your attention to some of my career highlights and community involvement accomplishments so you can reflect on the value I will bring to our community.

**Most recently, January 2020, I was nominated to the Executive Committee as the Treasurer of the Republican Club of Southwest, Florida.**

The vast majority of my professional life was in the newspaper industry. While I am quite proud of my significant professional successes, I think my work in Strategic Planning serves me especially well in community building.

Below, I've included an executive summary of my professional experience. I am looking forward to following up with you so I may earn your confidence and your vote!

### **Professional Experience**

**Troy Record:** Troy N.Y 1973 – 1978 Sales Representative.

- ***Times Union Newspaper***, Albany, New York 1978-2008: Director of Strategic Development. (A division of Hearst Corporation New York, NY). Executive Committee 1998-2008
- ***MCD Consulting Services, LLC***, CEO – President, Troy, NY 2008- Present: My own venture providing an array of not for profit and business based consulting services and solutions.
- ***Seton Health/ Northeast Health Foundation***: (Executive Director) Troy, NY – 2013-2014  
A leadership role to merge 5-foundations parallel to the merger of 5-local hospitals in the Capital District in NY State.
- **Educational Experience – attended**
- LaSalle Institute 1965-1969 (Military School / Upstate NY)
- Hudson Valley Community College 1969 -1972 / Upstate NY

My employment with Hearst Newspapers offered me the opportunity to receive great experience in the workplace. I was fortunate to attend many business and leadership courses as I traveled across the country gaining valuable knowledge on various campuses. This educational process was easily translated into many different facets of my diverse and successful career.

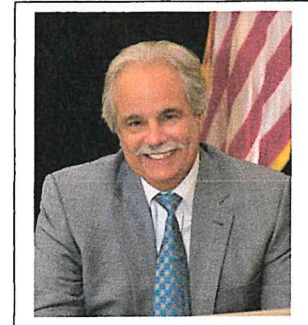
I am well known for my communication skills and a no nonsense style of leadership. My hallmarks are; professionalism, motivation and dedication. I have always been considered an average to above average manager but an *exemplary leader!*

Mr. Juan Romero, Chairman  
"Hispanics of Bonita Springs  
Political Awareness Committee"

October 2, 2020

Dear Mr. Romero,

I recently received your email correspondence relative to the Hispanics of Bonita Springs Awareness Committee. While I understand the criteria you have clearly outlined in your letter and because of my absence, certainly understand your automatic disqualification of any endorsement. Unfortunately, my personal schedule and COVID-19 concerns prevent me from attending. My apologies!



In full disclosure Carmen Salome, Chairperson of the HispanicVote of SWFL and her committee unfortunately have chosen not to endorse me, instead endorsing my opponent based on experience.

That said, I wanted you and your committee to know me... I have an extensive resume in community service and philanthropy. I have over 40-years of community service experience. I have been chairman of multiple foundation boards including College, Hospitals and a School for wayward children and young adults.

As the Director of Strategic Development at one of the Hearst Corporation's flagship newspapers (Albany Times Union) one of our signature events was sponsoring and hosting the NY Giant's training camp at the University of Albany. This annual event coupled with our Newspapers in Education program was the catalyst for us to connect with inner city families, primarily black and very underserved.

I must admit the Hispanic population in upstate New York (my home) is negligible but the concept of working with underserved families is the same. Having a person reevaluate themselves by building self confidence through education and mentoring is invaluable to the program.

I realize of course that language can be a frustrating barrier but not an insurmountable one. My philosophy is in order to help we need to better understand the trials and tribulations of their lives. This can only be accomplished by meeting with groups and LISTENING. To me there is a big difference between supporting a cause and being an actual part of the solution. I chose to be part of the solution.

I had an opportunity to listen to the Bonita Springs "Outreach Committee" meeting last week. I way very impressed with the leadership provided and also the programs and services.

Mr. Romero, this is not a political invitation but my executive resume summary is housed on my website: [campaign4mike.net](http://campaign4mike.net) (please consider me a resource)

Sincerely,

*Michael C. Danieli*

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPOINTING ONE MEMBER TO THE CITY OF BONITA SPRINGS OUTREACH ADVISORY COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs, adopted Resolution No. 17-019 creating the City of Bonita Springs Outreach Advisory Committee, which is to consist of seven (7) members serving one-year terms; and

WHEREAS, Resolution No. 18-13 was adopted on March 21, 2018 expanding the committee to nine members.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Bonita Springs, Lee County, Florida:

Section 1. The following person is hereby appointed to the Outreach Advisory Committee: \_\_\_\_\_

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 21<sup>st</sup> day of July, 2021.

AUTHENTICATION:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

Vote:

Steinmeyer  
Forbes  
Gibson  
Corrie

Quaremba  
Purdon  
Carr

Date Filed with City Clerk: \_\_\_\_\_

**REQUESTED MOTION:** Discussion ranking revised proposals for the Imperial Crossing development opportunity.

**REQUESTOR:** Derek Rooney, City Attorney

**AGENDA:** City Attorney's Items

**STRATEGIC PRIORITY:** #5 Community Aesthetics #8 Economic Development

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**BACKGROUND:** In 2020, the City completed the RFP process for development proposals for the Imperial Crossing development opportunity for the property formerly known as the Bamboo parcel. The RFP process resulted in one proposal from Shay Trask that the Council opted not to pursue.

The City has since remained open to unsolicited proposals and has received letters of interest to purchase the property from Noah Properties and from Hovland Real Estate, as well as a schematic proposal from Barron Collier in which the land would be leased from the City. A Bonita Springs resident, Charlie Strader, has also made a presentation to Council for an open park space to be owned and maintained by the City.

On June 16, 2021, the City Council held a workshop for the purpose of formulating a list of priorities of desired and undesired criteria with which to evaluate proposals for the Imperial Crossing development opportunity. At the workshop, presentations were made by Charlie Strader, Shay Trask, Noah Properties, and Barron Collier.

On June 18, 2021, the City Attorney sent a letter to the proposers providing the criteria and offering the opportunity to update their proposals in consideration of the Council's enumerated criteria. The letter and the criteria are attached for informational purposes.

In the order in which received, the following revised proposals are currently before the Council for consideration:

1. Barron Collier Companies
2. Noah Properties, LLC
3. Charlie Strader
4. Shay Trask

**STAFF RECOMMENDATION:** Council's pleasure.

**ATTACHMENTS:**

1. Letter from City Attorney providing criteria
  2. Revised Proposals
- 

**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_



June 18, 2021

**VIA E-MAIL**

Imperial Crossing / Bamboo Proposer

Re: Unsolicited Proposal Criteria

Dear Proposer:

The City of Bonita Springs City Council met yesterday in a workshop to discuss its intentions with respect to the Imperial Crossing / Bamboo properties in downtown Bonita. The Council established a list of “must” and “must-not” have criteria (attached) upon which to judge proposals. The Council also recommitted to the concept of hybrid or public private partnership. In English, this means that the City will consider proposals for the property not based on monetary compensation but based on each proposer’s ability to address the priorities of the Council in developing the property. The concept broadly speaking is for a land lease with commercial and, to a lesser extent, residential components tied together and integrating public spaces to activate the waterfront and downtown generally. Rather than prepare a new solicitation, the Council would first like to allow those who provided unsolicited proposals an opportunity to supplement their existing proposals to conform with the attached criteria. I recommend each of you watch the full workshop available on the City’s website for further context on the concepts and criteria selected.

The City Council is looking to move quickly to obtain revised proposals and move forward. Accordingly, we are asking that interested proposers update their proposals and provide those revisions by July 13th. This will allow the proposals to be presented and discussed at the Council’s July 21st regular meeting. The updated proposals should be high-level and conceptual in nature highlighting each proposal’s ability to address the attached criteria. Specifically, the City will utilize the public-private partnership procedures of Section 255.065, Florida Statutes, to accept the proposals, rank, and begin negotiations with the highest ranked proposer to enter into formal agreements to develop the property.

Sincerely,

/s/ Derek Rooney  
City Attorney

DPR  
Attachment

9101 Bonita Beach Road  
Bonita Springs, FL 34135  
Tel: (239) 949-6262  
Fax: (239) 949-6239  
www.cityofbonitasprings.org

**Rick Steinmeyer**  
Mayor

**Amy Quaremba**  
Council Member  
District One

**Jesse Purdon**  
Council Member  
District Two

**Laura Carr**  
Council Member  
District Three

**Chris Corrie**  
Council Member  
District Four

**Michael Gibson**  
Council Member  
District Five

**Fred Forbes, AIA**  
Council Member  
District Six

**Arleen M. Hunter**  
City Manager  
(239) 949-6267

**Derek P. Rooney**  
City Attorney  
(239) 949-6254

**City Clerk**  
(239) 949-6248

**Public Works**  
(239) 949-6246

**Neighborhood Services**  
(239) 949-6257

**Parks & Recreation**  
(239) 992-2556

**Community Development**  
(239) 444-6150

- Hybrid Approach (include a “must have” component)
- City “Must” Haves:
  1. Public River Access
  2. Activate Space
  3. Open/Park Space
  4. Experiential Destination
  5. Water features
  6. Parking
  7. Family Appeal
  8. Landscaping (Shade)
  9. Commercial Component
  10. Meeting Space (Structure)
  11. Enhanced Lighting
  12. Year-Round Residential
  13. Broad Architectural Appeal
  14. Developer Initiated-Community Concept
- City “Must-NOT” Haves:
  1. No Majority Residential
  2. Limited Resident-Only Amenities (available for public)
  3. No Monolithic Building
-

## Carly Sanseverino

---

**From:** Derek P. Rooney <Derek.Rooney@gray-robinson.com>  
**Sent:** Friday, July 2, 2021 6:26 PM  
**To:** 'Mark A. Ebelini'; 'Steve Hovland'; 'Shay Trask'; 'Nick Casalanguida'; 'Charlie Strader SWFAS'  
**Cc:** Mayor and City Council  
**Subject:** RE: Imperial Crossing Unsolicited Proposals

Dear Proposers,

Due to compliance requirements with Section 255.065, Florida Statutes, the deadline for submitting revised proposals has been extended by one day to close of business July 14. Please let me know if you have any questions. Feel free to email the proposals directly to me or send them to City of Bonita Springs Attn: City Clerk, 9101 Bonita Beach Road, Bonita Springs, Florida, 34135.

Sincerely,

Derek Rooney

---

### Derek P. Rooney

Shareholder

**T** 239-340-7979 / 239-598-3601

**D** 239-254-8455

**F** 239-321-5334 / 239-598-3164



GrayRobinson, P.A. ■ 1404 Dean Street, Suite 300, Fort Myers, Florida 33901

GrayRobinson, P.A. ■ 3838 Tamiami Trail North, Suite 410, Naples, Florida 34103



---

**From:** Derek P. Rooney <Derek.Rooney@gray-robinson.com>  
**Sent:** Friday, June 18, 2021 1:58 PM  
**To:** 'Mark A. Ebelini' <mebelini@knott-law.com>; 'Steve Hovland' <sthovland@me.com>; 'Shay Trask' <shay.trask@gmail.com>; 'Nick Casalanguida' <ncasalanguida@barroncollier.com>; 'Charlie Strader SWFAS' <swfas@explorationsinc.com>  
**Cc:** 'mayorandcitycouncil@cityofbonitasprings.org' <mayorandcitycouncil@cityofbonitasprings.org>  
**Subject:** Imperial Crossing Unsolicited Proposals

Dear Proposers,

Please see the attached correspondence regarding your proposals for the properties known collectively as Imperial Crossing or Bamboo. My letter provides additional direction regarding how to proceed given the City Council's direction at its June 16<sup>th</sup> workshop. If you have any questions or concerns please contact me directly. Thank you and we look forward to your continued interest in these properties.

Respectfully,

Derek Rooney  
City Attorney

**T** 239-340-7979 / 239-598-3601

**D** 239-254-8455

**F** 239-321-5334 / 239-598-3164

**Derek P. Rooney**

Shareholder



GrayRobinson, P.A. ▪ 1404 Dean Street, Suite 300, Fort Myers, Florida 33901

GrayRobinson, P.A. ▪ 3838 Tamiami Trail North, Suite 410, Naples, Florida 34103



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July 6, 2021

Derek Rooney, City Attorney  
City of Bonita Springs  
9101 Bonita Beach Road  
Bonita Springs, FL 34135

RE: Imperial Crossing / Bamboo Revised Letter of Interest "Proposal"

Dear Attorney Rooney:

In response to your June 18, 2021 request for update, Barron Collier Companies (BCC) is pleased to submit a revised letter of interest for the downtown Bonita redevelopment project known as Imperial Crossing. BCC has a rich history in southwest Florida as a respected landowner, developer, and community steward. We develop and manage residential, commercial, and industrial property nationally. We are especially proud of our award-winning master planned community Ave Maria.

We have watched the evolution of the City's search for a redevelopment partner with great interest. The City is clearly committed to transformation without losing the charm and history of the community. BCC is no stranger to working with elected officials, community leaders, and the residents when it comes to development projects. Our reputation over decades has been keeping promises, delivering on quality, and creating community value.

We are actively engaged in other developments within Bonita Springs, and we believe we can work together with the City to enhance downtown Bonita Springs. Our team is excited to demonstrate to the Council and the community that BCC can create a downtown centerpiece that will have generational significance.

Our intent would be to partner with you under the following parameters:

1. BCC proposes to lease the land, under the buildings only, through a long-term agreement. It was clear to our team that it was important to the city to maintain ownership and control of the open spaces. We would propose a percentage of revenue back as our lease payment to the City.
2. BCC proposes to facilitate two workshops at the initial stages of development. The first would be with the City Council, staff, and the public. The second workshop would be with the City Council to finalize the concepts and terms.
3. We also propose tax increment financing or other form of funding participation from the City for the cost of improvements in the public space outside of the buildings. This would allow us to create significant public benefit for the citizens of Bonita Springs.



Should the City be interested in our proposal, we would request that the City enter into “Interim Agreement” as defined in Section 255.065, Florida Statutes, allowing an exclusive period to complete our due diligence, conduct workshops with the public, and deliver the “comprehensive agreement” as contemplated by the Florida Statutes.

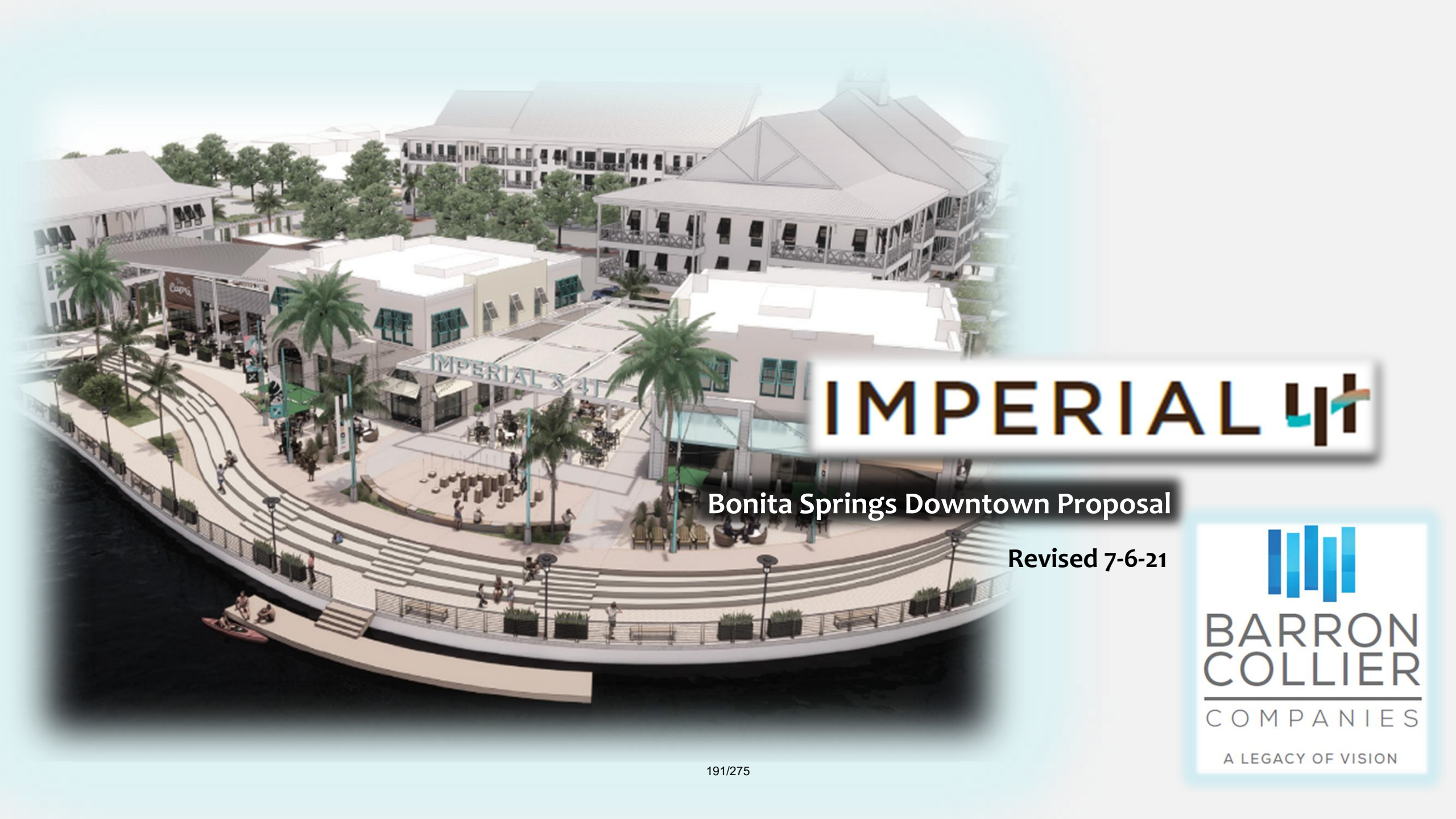
In response to the request for an update, we have included a revised power point that clarifies each item that the City Council identified as a “Must Have” and “Must Not Have” in the proposal beginning on slide 14. You have our initial renderings and video clip from our prior submittal. We would be happy to make ourselves available to staff and City Council to meet and answer questions.

Respectfully,

A handwritten signature in blue ink that reads "Nick Casalanguida". The signature is fluid and cursive.

Nick Casalanguida  
Barron Collier Companies

Cc: City Council  
City Manager



# IMPERIAL 41

Bonita Springs Downtown Proposal

Revised 7-6-21





**reztark**

## Developers, Architects, Engineers, and Contractors

- Proven Track Record of Success
- Local, Regional, & National Experience
- Reputation, Integrity, and Ownership



# About the Team

“None of us is as smart as all of us”

Ken Blanchard



# Our Promise

We will work together with you to create a generational vision

## We recognize this project has Generational Significance

- Citizen Feedback
- City Council Buy In
- Realistic Expectations
- Transparency

# Key Factors For Success

Balancing Development Impact, Financials, and Objectives

## City Ownership

- Long Term Ground Lease
  - Control
  - Increased Revenue

## Public Space

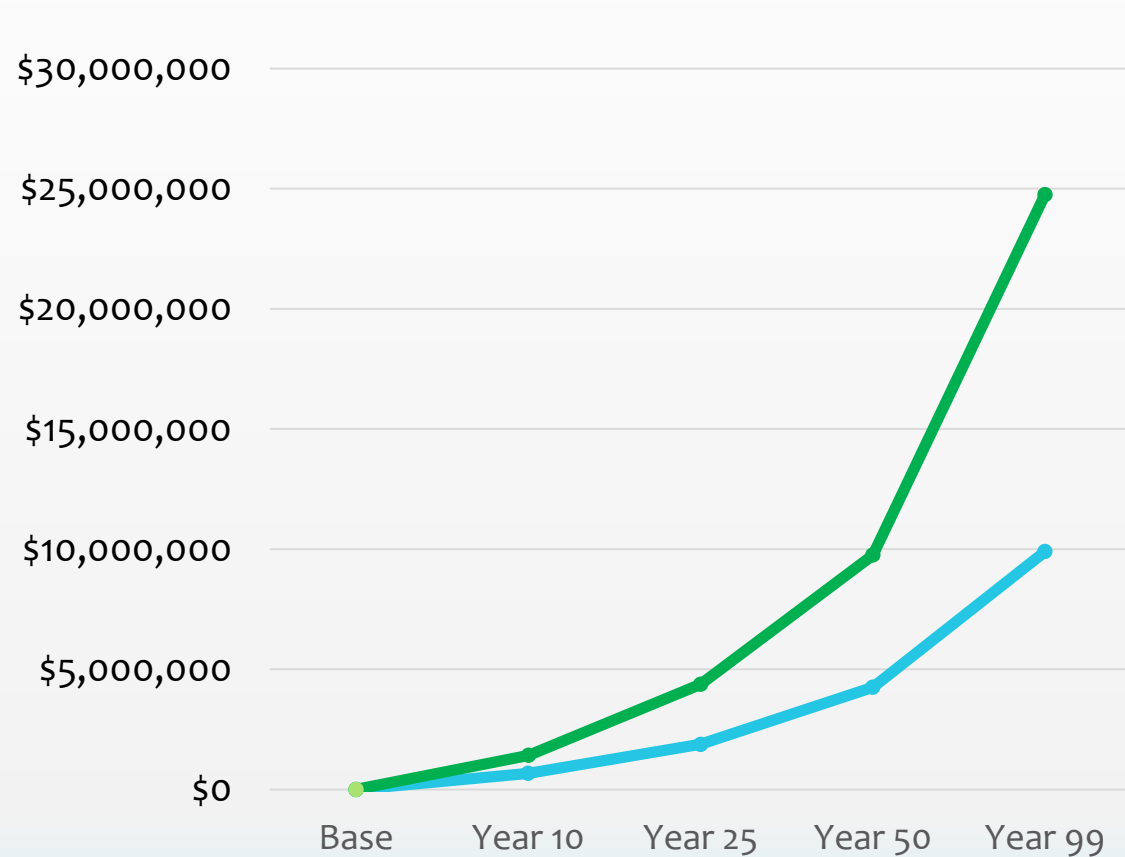
- Developer Financed
  - Built up front, potentially in phases
  - Turned over to the City for operations and programming
  - Creative financing with the City

## Engagement

- Feedback from City Council & Public
  - Workshop 1
    - Staff, Public, & Council
  - Workshop 2 or Presentation
    - Final layout and Comprehensive Agreement

# Revenue in Perpetuity

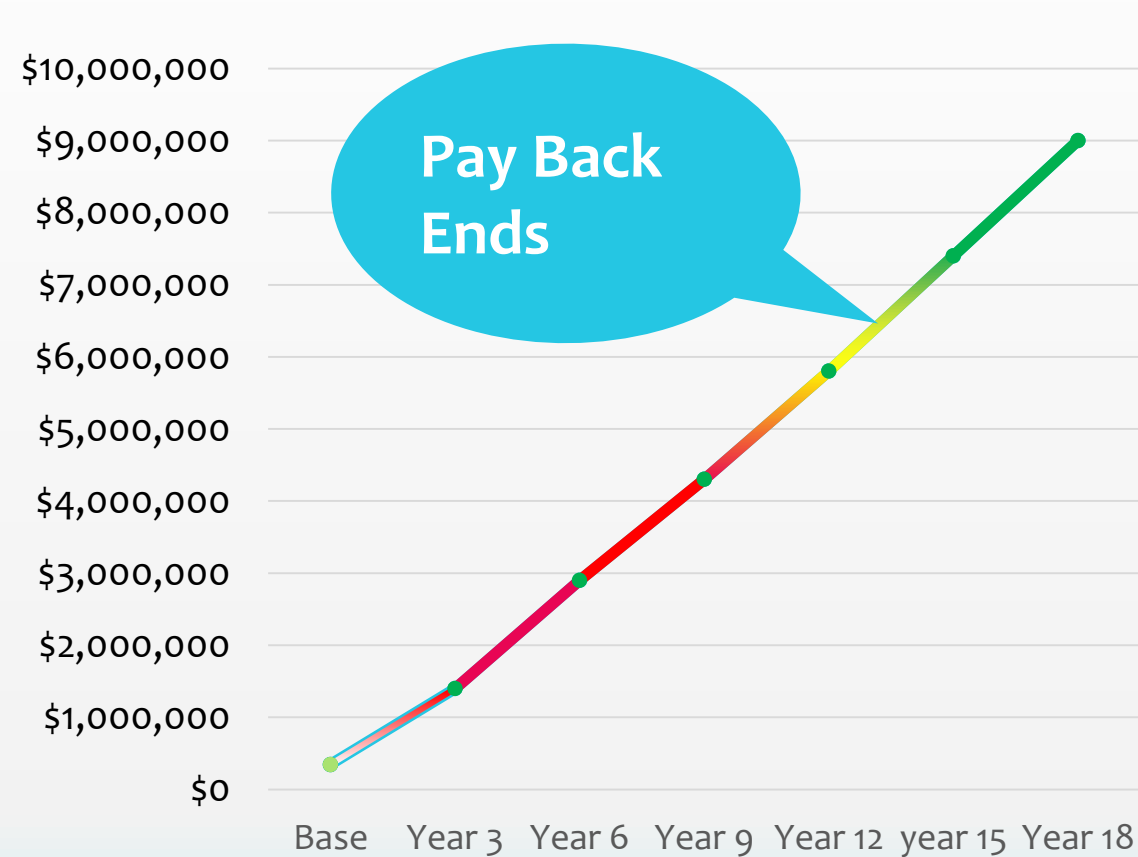
Time is a revenue multiplier



Revenue Over Time

# Pay Back Capped to Expenses for Public Spaces

New tax revenue and City participation



Expenses Over Time

# SCHEME 1 - SITE PLAN

## AREA TABULATIONS

1

### NORTH SITE:

RESIDENTIAL	= 41 UNITS
(IF 4 LEVELS)	+ 13 UNITS
COMMERCIAL/RETAIL	= 17,350 SF
OFFICE	= 0
PARKING PROV'D	= 70 SPACES

2

### SOUTH SITE:

RESIDENTIAL	= 59 UNITS
(IF 4 LEVELS)	+ 24 UNITS
COMMERCIAL/RETAIL	= 24,000 SF
OFFICE	= 0
PARKING PROV'D (LOT 1)	= 82 + 14 SPACES
(OUTLOT)	= 66 SPACES

### TOTAL:

RESIDENTIAL	= 100 UNITS
COMMERCIAL/RETAIL	= 41,350 SF
OFFICE	= 0
PARKING PROV'D	= 232 SPACES



196/275

# SCHEME 2 - SITE PLAN

## AREA TABULATIONS

1

### NORTH SITE:

RESIDENTIAL	= 40 UNITS
COMMERCIAL/RETAIL	= 20,000SF
OFFICE	= 0
PARKING PROV'D	= 112 SPACES

2

### SOUTH SITE:

RESIDENTIAL	= 75 UNITS
COMMERCIAL/RETAIL	= 24,600 SF
OFFICE	= 0
PARKING PROV'D (LOT 1)	= 90 SPACES
(OUTLOT)	= 66 SPACES

### TOTAL:

RESIDENTIAL	= 115 UNITS
COMMERCIAL/RETAIL	= 44,600 SF
OFFICE	= 0
PARKING PROV'D	= 268 SPACES



# Public Engagement

Peninsula Planning & Engineering

- Project Understanding
- Questions and Input Focused On Managed Variables
- IE:
  - More Park or More Market Space?

Final Version Comes Back to City Council



# Scheme 1

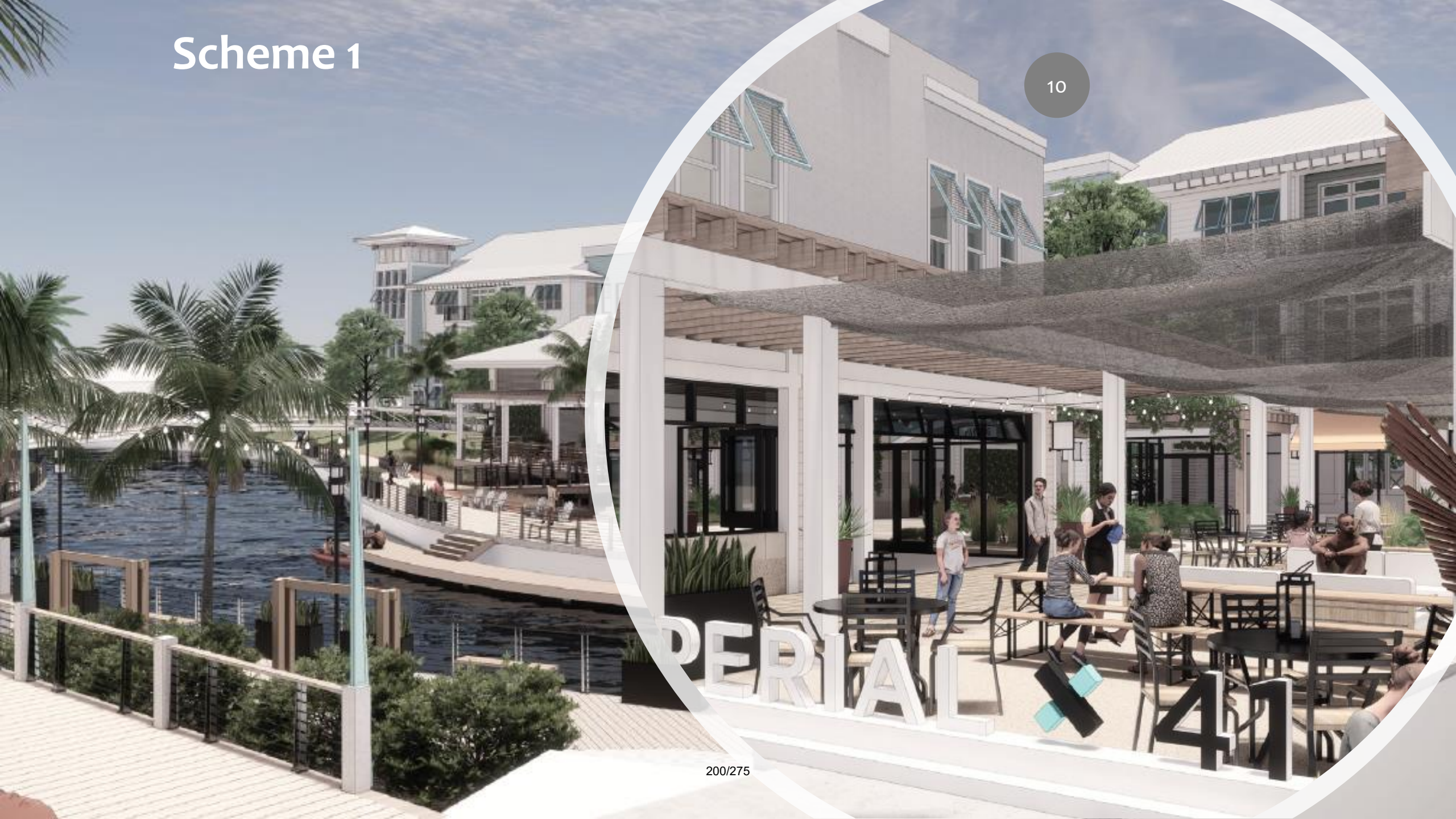


SCHEME 1 - AERIAL 1



# Scheme 1

10



# SCHEME 2 - AERIAL 1



# Scheme 2



202/275



# IMPERIAL

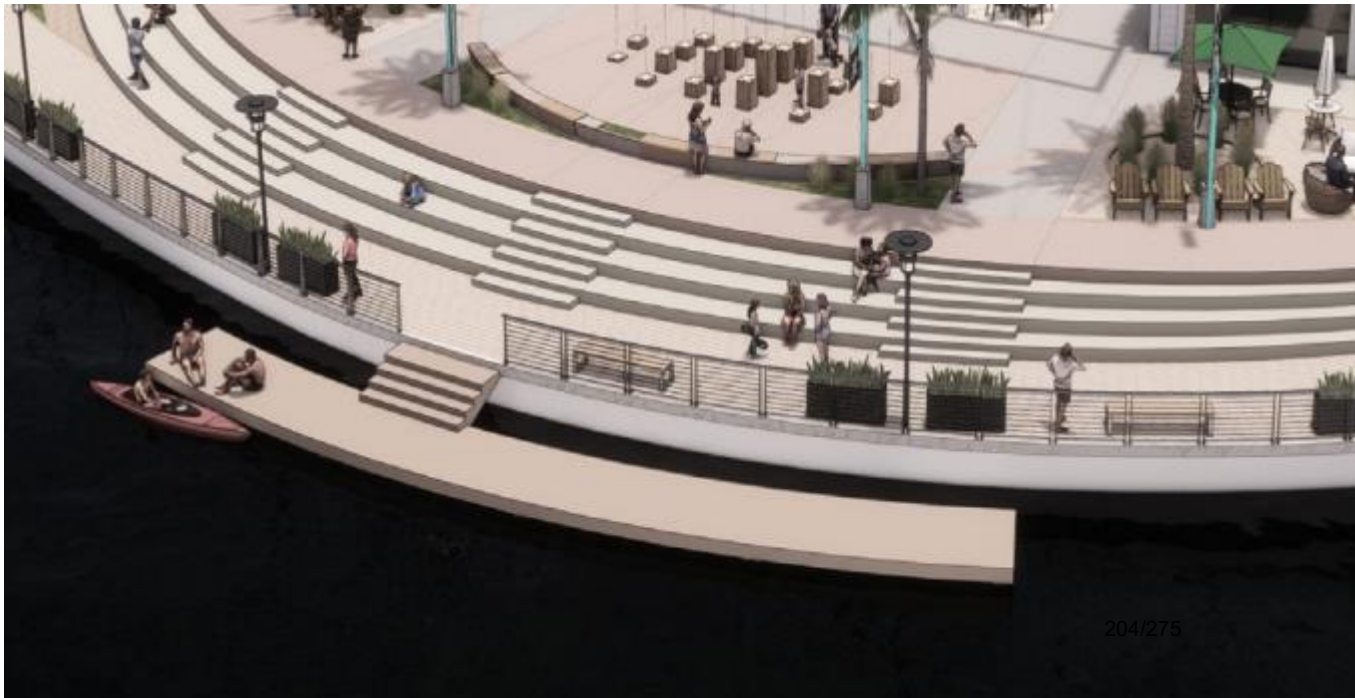
[https://www.youtube.com/watch?v=2N-Z\\_5d3RSg](https://www.youtube.com/watch?v=2N-Z_5d3RSg)



# Proposal Clarifications

## “Must Have”

- **Public River Access #1**
  - We propose that the entire waterfront is available to the public along with one or two ways to physically enter and exit the water.



# Proposal Clarifications

“Must Have”

- **Activate Space #2, Open/Park Space#3**
  - We propose all spaces outside the buildings are public. This includes a market area, park, walking trails, fire pits, and shaded areas.



# Proposal Clarifications

“Must Have”

- **Experiential Destination #4, Water Features #5**
  - We propose a central water feature, fire pits, market area, live music area, and supporting experiential themed restaurant(s).



# Proposal Clarifications

## “Must Have”

- **Parking #6, Family Appeal #7, & Landscaping (shade) #8**
  - We will provide parking and plan for additional opportunities with the City. The site is planned for family friendly activation with an abundance of landscaping and shade.



# Proposal Clarifications

“Must Have”

- **Commercial #9, Meeting Space #10, Enhanced Lighting #11, & Year Round Residential #12**
  - We propose a variety of commercial opportunities and enhanced lighting.
  - This project proposes rental units, not for sale units. We expect our residents to be active members of the community and support the space.
  - The market area can also serve as open public meeting space and the residential flex space can be made available to the public.



# Proposal Clarifications

“Must Have”

- **Broad Architectural Appeal #13 and Developer Initiated-Community Concept #14**
  - We believe the renderings showcase a broad architectural appealing style.
  - We plan to vet our ideas with the community to gather public input for the final product.



# Proposal Clarifications

## “Must Not Have”

- **No Majority Residential #1, Limited Resident-Only Amenities #2, & No Monolithic Building #3**
  - The residential has been purposely limited to balance with the public space and retail/restaurant space.
  - Minimal residential only amenities will be included such as a small fitness area or common mail and gathering space.
  - No monolithic buildings have been proposed. The concept uses significant architectural embellishments along with angular and curved design features.



**BARRON  
COLLIER**  

---

**COMPANIES**

**Thank You**

# Knott · Ebelini · Hart

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+ Board Certified Business Litigation Lawyer

mebelini@knott-law.com

July 13, 2021

Via Email to: [Derek.Rooney@gray-robinson.com](mailto:Derek.Rooney@gray-robinson.com)

Derek P. Rooney, Esq.  
Gray Robinson  
1404 Dean Street, Suite 300  
Fort Myers FL 33901

Re: Imperial Crossing Unsolicited Proposals

Dear Mr. Rooney:

Thank you for your correspondence on June 18 and July 2 regarding the Imperial Crossing proposals. This is the first of two letters from Noah Properties, LLC (“Noah Properties”) in response. Noah Properties previously submitted a proposal in the form of a Letter of Intent to acquire the Imperial Crossing property from the City. Noah Properties’ proposed plan contained a proposal with only 102 residential units, together with public open/activity space along the Imperial River waterfront served by retail and dining space to promote interaction with the waterfront.

Noah’s proposal did not request any tax abatement or reduction of assessments from the City, only a reduction of permit fees to the extent possible based upon development of numerous opportunities for public access, including deed restricted riverfront open space. Noah followed its Letter of Intent with an appearance before the City Council at its Workshop on June 16, 2021, providing a concept of the project and providing a bit more information about Noah Properties and its development and construction experience and ability. Noah Properties looks forward to working with the City to develop a site plan meeting the City Council’s criteria, creating a destination project for the City, with a residential/commercial component sufficient for Noah Properties to invest in the venture and to support the commercial uses and the downtown.

Derek P. Rooney, Esq.

July 13, 2021

Page 2

Noah Properties is still willing to proceed in accordance with its initial Letter of Intent, dated April 12, 2021. Noah Properties would also be interested in assisting the City in a design-build venture or as the City's General Contractor.

Again, thank you for the opportunity.

Very truly yours,

KNOTT EBELINI HART

A handwritten signature in blue ink, appearing to read "Mark A. Ebelini". The signature is stylized with a large, circular flourish at the end.

Mark A. Ebelini

MAE/mcl

Cc: client

# Knott · Ebelini · Hart

Attorneys At Law

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[mebelini@knott-law.com](mailto:mebelini@knott-law.com)

July 13, 2021

Via Email to: [Derek.Rooney@gray-robinson.com](mailto:Derek.Rooney@gray-robinson.com)

Derek P. Rooney, Esq.  
Gray Robinson  
1404 Dean Street, Suite 300  
Fort Myers FL 33901

Re: Imperial Crossing Unsolicited Proposals

Dear Mr. Rooney:

This letter presents an alternative to my letter of this same date regarding the Imperial Crossing project. Your correspondence of June 18, 2021 stated the Council recommitted to the concept of a hybrid or a public/private partnership. You explained that the City would evaluate “each proposer’s ability to address the priorities of the City Council in developing the property.”

However, as you acknowledged in your letter, a public/private partnership under Section 255.065 would be a land lease, usually a 99-year lease for a project of this nature. Noah Properties is prepared to invest effort in refining its proposal and has engaged Ramon Acevedo of GMA Architects & Planners to provide his talent toward refining the conceptual plan at the June 16, 2021 Workshop. However, the City’s criteria are very conceptual, making it difficult to present a more detailed proposal, as residential and commercial is important to assess whether what is desired would make sense for any developer to finance and build, and to ensure a successful project.

Our initial proposal was unsolicited and demonstrated that Noah Properties wants to pursue this project. However, we await more refinements on what the City is looking for before it can commit to moving forward with a public/private partnership or a hybrid concept. We suggest that the hybrid would be splitting off the residential and commercial component as a purchase, which would enable traditional financing, and have the open/activity space and public access component, and perhaps even some of the commercial areas developed under the land lease as required by Section 255.065. While this is a shift in what Noah Properties

Derek P. Rooney, Esq.

July 13, 2021

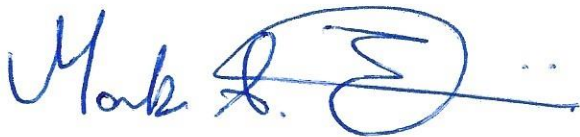
Page 2

presented in its April 12, 2021 Letter of Intent, a hybrid concept is more feasible if the City would work with Noah toward refining what areas would be leased and what areas may be subject to fee ownership.

Noah Properties is excited to participate in this project but looks forward to more refinement of the City Council's criteria. Again, our concept for the project has been to limit the residential component well below density suggested by others and highlight the waterfront open/activity space and accessory commercial establishments, which would serve destination tourists and City residents. However, a residential component is also important for a more viable commercial component (everyday use), and to aid in the revitalization of the surrounding downtown Bonita Springs business district.

Very truly yours,

KNOTT EBELINI HART

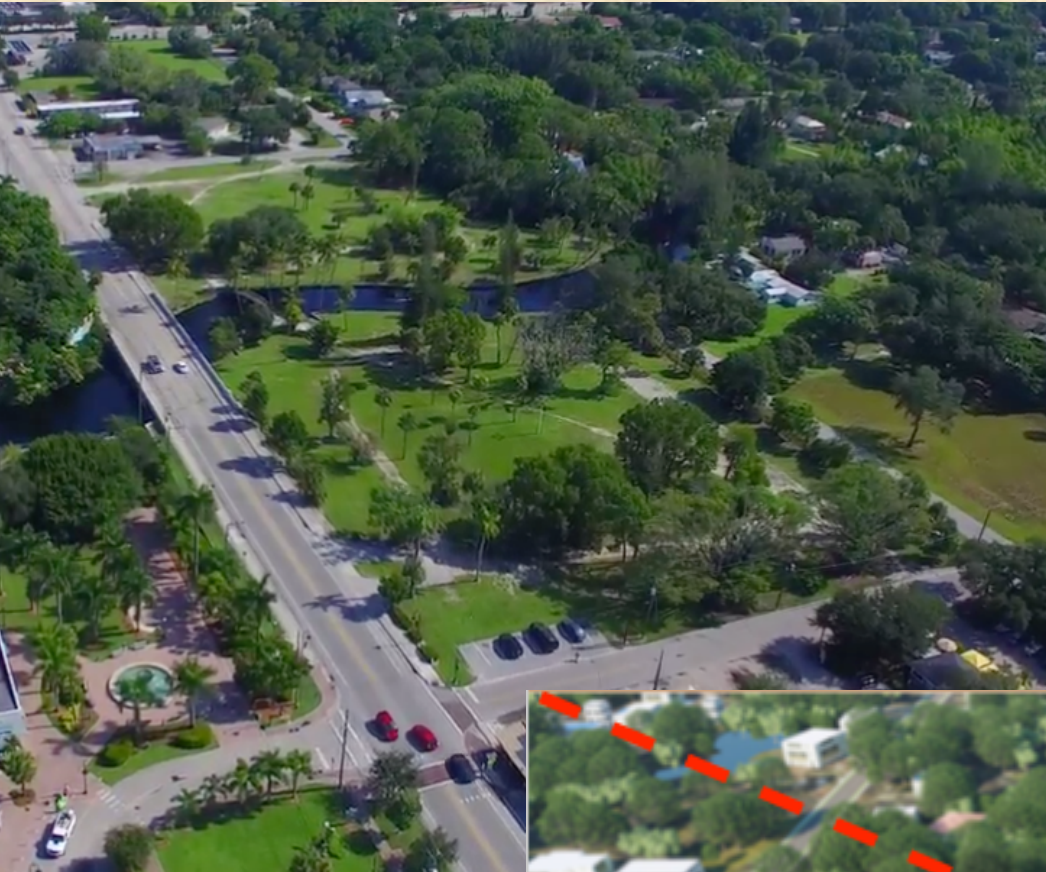
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Mark A. Ebelini

MAE/mcl

Cc: client

# Bamboo Village Property / Imperial Crossing



**Now**

**Cui bono? - Who benefits?**

**Future?**





**The 4 acre park is being funded by public and private funds. Already, “city officials say \$7.2 million has been raised from public (state/local) and private sources, including foundations, businesses, corporations and individuals.”**

## **BVP: A catalyst for redevelopment.**

**Public Use is the best longterm strategy and fulfills the city's obligation to use public funds for the benefit of all its taxpayers.**

**Public use can provide recreational opportunities, spur local economies, and can help with stormwater management.**

**The city can create a valuable asset that generates economic and social returns. Other cities do it, so can we!**



# **CITY PARKS**

**A Smart Investment  
for America's  
Health, Economy &  
Environment**

## **CASE STUDIES**

218/275



# Checklist

## Hybrid Approach

The more you involve the community, the more likelihood of success.

Being proactive in partnerships, not reliant on private developers would be more productive for funding and design.

## POTENTIAL PARTNERS

Besides **Wonder Gardens** non-profit, strategic partnerships could include: **State/Federal agencies, institutions, attractions, DEP, FGCU, South Florida Water Management District, MOTE Marine, museums, aquariums, universities, gardens, foundations, philanthropies, private donors, FPL, BSU, engineering, landscape, architectural & planning firms, & construction, financial, & technology companies, etc.**



# Must Haves - Top 3

## 1. Public River Access, 2. Activate Space, 3. Open/Park Space



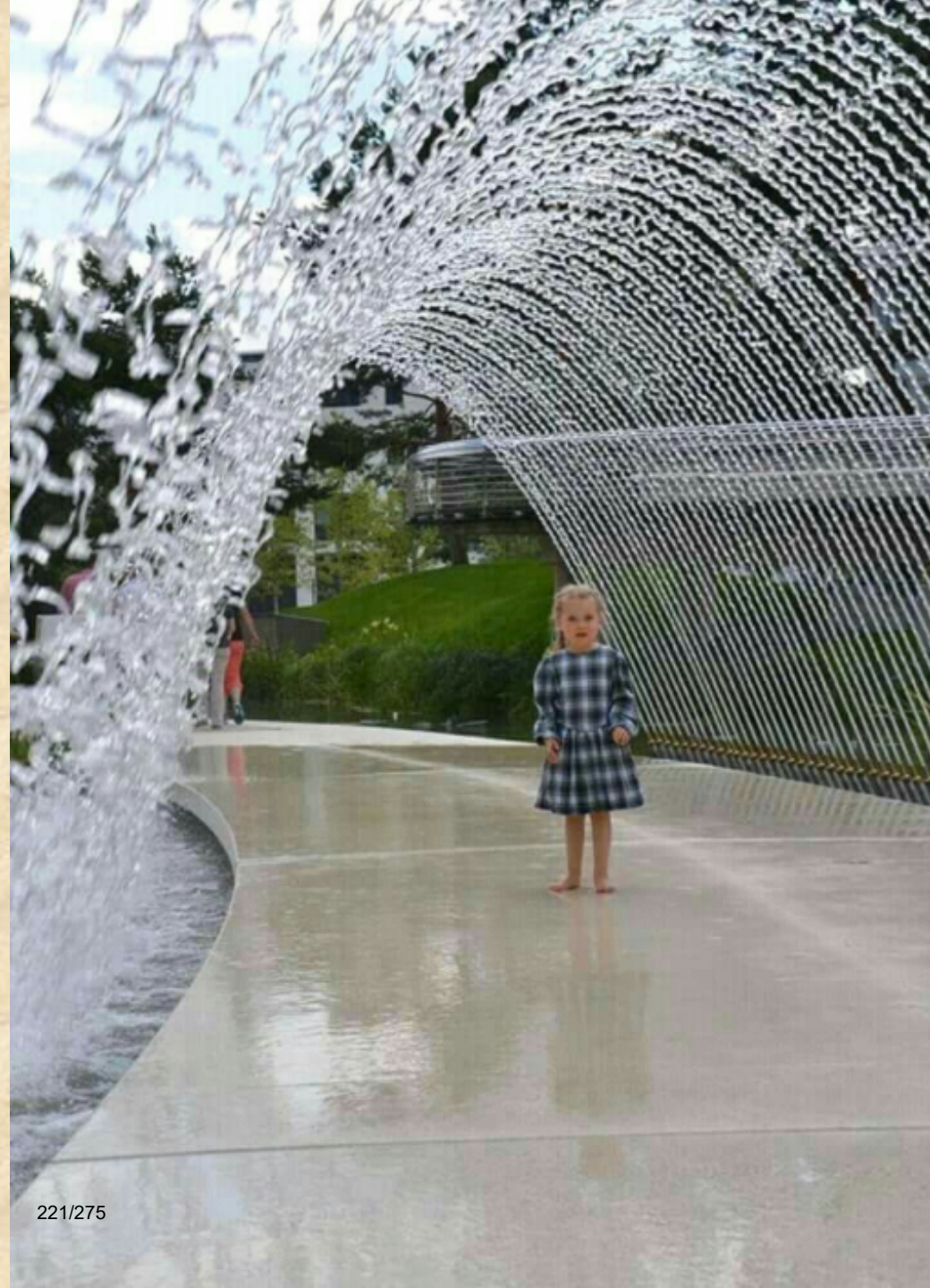
# Must Haves

## 4. Experiential Destination

## 5. Water features

These two can even be combined.

- **Water Features can be interactive, providing fun, plus be scenic and educational.**
- **Water Features could actually help with water quality and be eligible for grants.**



# Must Haves

**6. Parking: A Downtown Challenge. Multi-use open spaces could serve multiple purposes for parking, recreation and vendor areas.**

Baker Park, Naples



# Must Haves

7. Family Appeal

8. Landscaping (Shade)

9. Commercial Component

10. Meeting Space (Structure)

11. Enhanced Lighting



# Must Haves

- 12. Year-Round Residential
- 13. Broad Architectural Appeal
- 14. Developer Initiated - Community Concept



## Food Cartology

Rethinking Urban Spaces as People Places

**Urban Vitality Group**  
Planning • Economics • Consulting



# Not Haves

1. No Majority Residential
2. Limited Resident-Only Amenities (available for public)
3. No Monolithic Building



# Financials

All of the current proposals to date involve city subsidizing (investing taxpayers lands or funds) at some level: low purchase/lease price, tax breaks, city development of common areas, parking, water issues, etc.

Instead of investing tax dollars with a private developer for their financial gain and build condos/commercial for the benefit of just some of our residents, why not invest those public funds for public use to the benefit ALL of our residents - plus attract more visitors?



# Financials

**Public use of the property, along with riverine and water quality improvements, open up a wide range of possible funding sources.**



# Funding Options

- **Municipal Financing**
- **Water quality grants**
- **Parks & Recreation grants**
- **Conservation & Environmental grants**
- **Private funding and Crowdfunding**
- **Strategic collaborations**
- **Corporate sponsorships**
- **Public-private partnerships**
- **Festival & event rentals**
- **Use fees**
- **Dedicated tax revenues**



# Possibilities:

- The City of Bonita Springs has a good foundation to build upon for the future. Let's enhance what we already have and look towards the future.
- We do not need to be in a rush, nor deprive future generations the public use of city lands.





**Whatever is  
built on the  
property needs  
to be prepared  
for water.**

**Liles Hotel, Riverside Park**

**Benson's Grocery**



- For comments and resources, contact: [Charlie@ConservationBonita.org](mailto:Charlie@ConservationBonita.org)
- Cover aerial photo by Robb Stan & JP Thies
- Produced by Charlie Strader 2021



This can become...

# Imperial River Crossing

A game plan to developing something amazing in Downtown Bonita Springs.



# Table of Content

- Pages 4-6: Introduction
- Pages 7-9: Initial Concept
- Pages 10-22: Renderings and Explanations
- Pages 23-27: City "must" and "must not" List
- Pages 28-30: Overall Downtown City Impact
- Pages 31-33: Plan to Succeed
- Page 34: Contact Information
- Pages 35-46: HD Renderings
- Pages 47-49: Aerial View Cutaways
- Page 50: Thank You and Contact Information

## General Layout

- The north parcel will consist of over 60% public green space and will capture 100% of the river frontage.
  - A mixed-use building in the northwest corner at the intersection of Old 41 and Goodwin Street will provide main floor commercial space and covered parking with residential above.
- 
- The south parcel has about 50% public green space all along Old 41 and the river.
  - A commercial building along this green space will take advantage of indoor/outdoor dining and shops. Hidden behind that building is a large parking lot that will be used for the commercial space and be available for the public. A water retention pond behind that can be used as a permeable parking lot if desired as well.



## General Footprint

- Total, this property is roughly 5 acres. Of that, about 4.2 acres are left for public use between green space and parking.
- The north side uses .88 of an acre for the mixed-use building which includes over half of that being ground floor public parking.
- The south side commercial building uses .41 acres for the building with covered patio surrounding it. Behind this building is a 1.01 acre area for public parking.
- Total there is about 2.7 acres of public green space, about 1.5 acres of public parking, and approximately .8 of an acre used for ground level commercial space.



5

## The plan to develop

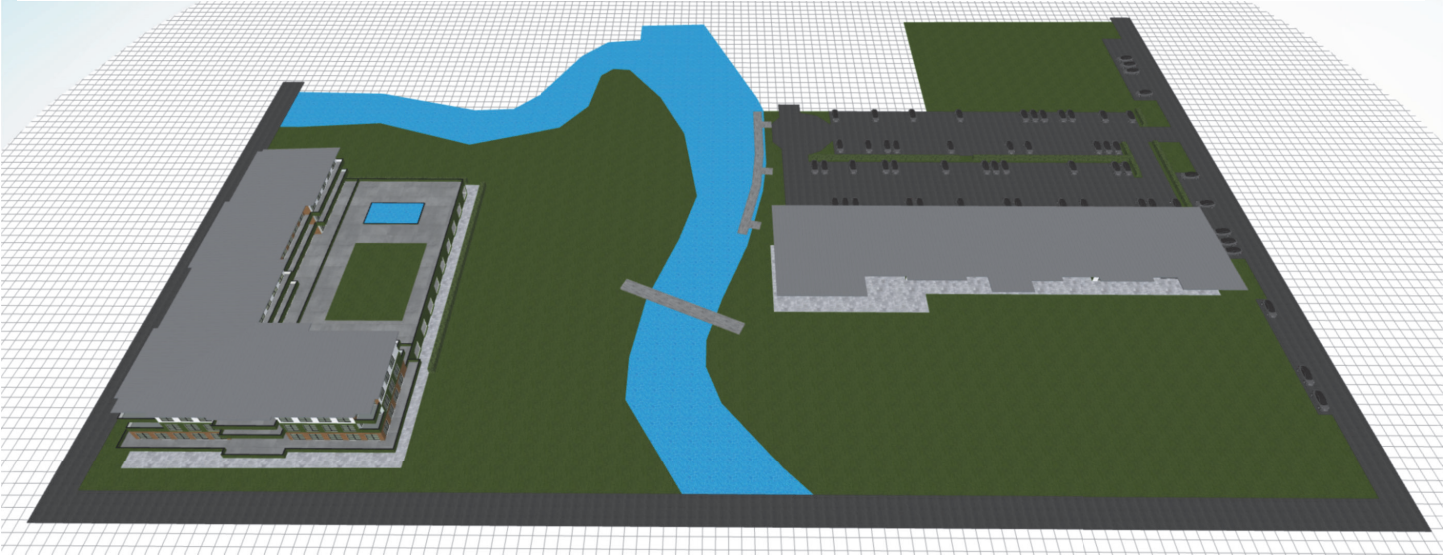
- The NW corner Mixed-Use project will be a private development. The goal is to combine commercial and parking on the main level with a full time residential component or boutique hotel above it.
- The north and south green space will be developed with lots of plants, walk-ways, water-features, riverfront access including a floating dock, a bridge across the river, and some sort of artwork throughout. This will most likely be a private non-profit/public partnership.
- The commercial building on the south parcel will be a private development that will consist of restaurants and shops.
- The south public parking area will be done as a private/public partnership with the private commercial development.



6

# Initial concept - Aerial from the west

Notice the ratio of overall green space compared to buildings in this first conceptual drawing showing the use of space.



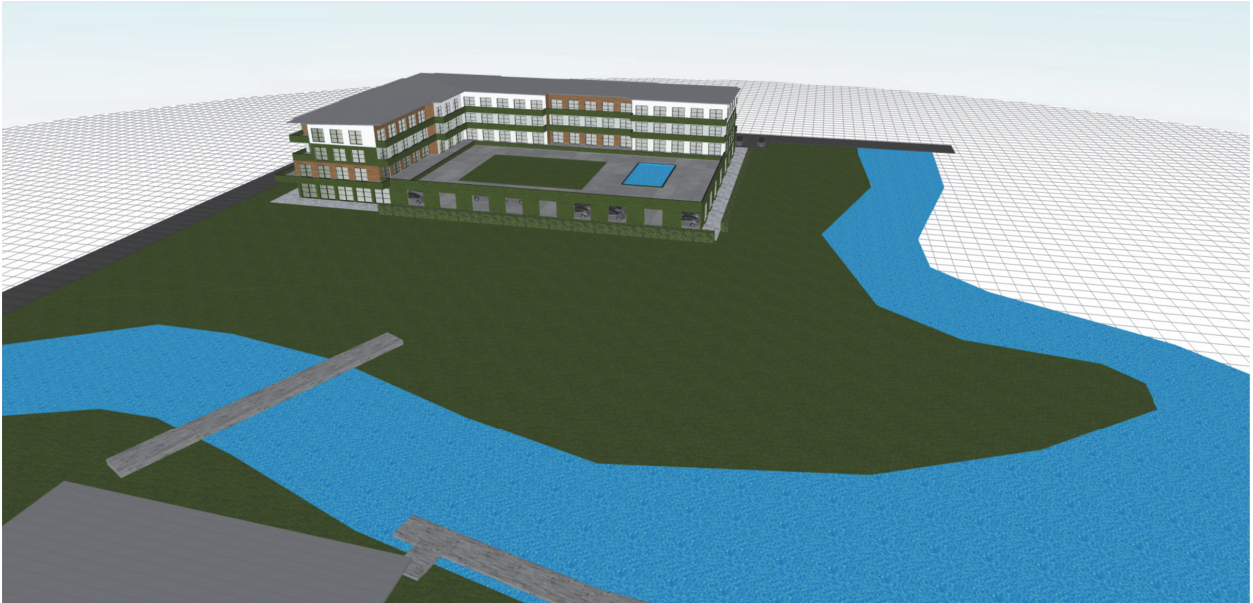
7

The visual shows the amount of green space between Old 41 and the commercial building on the south parcel.



8

This view is showing the conceptual public green space compared to the mixed-use building parking garage with rooftop patio and pool area above overlooking the public green space.



9



**1. An architecturally pleasing building with lots of glass facing the park and river, with large overhangs and matching patio space. It will be a buffer for the parking lot and will have a walkway through the building that will also be the entrance to the public restrooms for all of the shops and restaurants.**

10

## South Commercial Building

## Restaurants & Shops



2. There can also be a covered area in back that can be used for valet parking. This building should carry an indoor/outdoor concept throughout it but also provide a lot of roof to protect from the hot Florida sun and rain so that it will be useful in all types of weather.

11

## South Commercial Building

## Restaurants & Shops



3. Construction should be of the highest grade materials and sustain our Florida climate and storms. This commercial developer will also be in charge of partnering with the city to complete the parking lot behind the building.

12

## North Mixed-Use Building



The north side mixed-use building will be a privately developed building that will have 4 major components.

1. A ground floor commercial space long the Old 41 end of the building. This will consist of restaurants and/or shops.
2. A ground floor parking garage that will consist of both public and private parking.

13

## North Mixed-Use Building



3. Floors 2 and above will most likely be apartments, offices or a boutique hotel.
4. Above the parking garage will be patio space for both the private development and/or possibly for a public use. Above the parking garage lends a perfect spot to overlook the public green space and the river.

14

## North Mixed-Use Building



**This building should set the tone for downtown living and lifestyle and should be functional as well as architecturally pleasing.**

**Ideally this building would be taller than anything around to make it the pinnacle of downtown establishing a true city. This would also be an incentive to the developer to be the first one downtown and take on this project.**

15

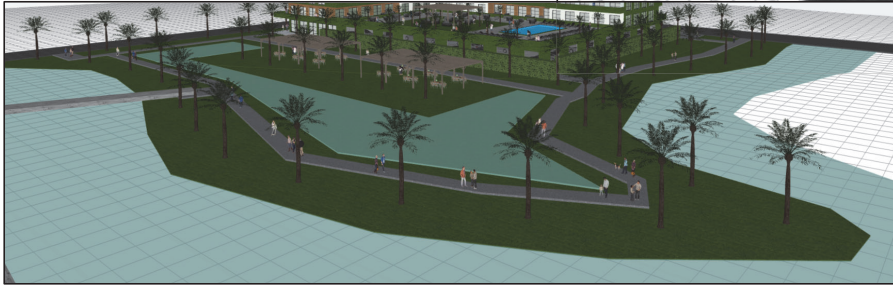
## Public Green Space



- **The public green space will be something that the city will keep as their own land and partner with the private developers or a 3rd party to revamp the remaining 2.7 acres of land.**
- **This land will be improved in several ways including a new seawall (or natural riverbank) and dock area with a kayak launch and storage area. This storage area and launch will be right next to the south side parking lot for extremely easy access with floating dock and perhaps walkway under the bridge to Riverside Park.**

16

## Public Green Space



- The rest of the land will consist new palm trees and other Florida native vegetation to really bring the area back to a park like setting.
- There will be walking trails through the entire public green space with gazebos throughout for large gatherings and picnics and lighted fountains to create tranquility and create a perfect setting to show off artwork.

17

## Public Green Space



- Another idea would be to create life-size, life-like replicas of Florida's favorite animals so that kids and adults could get up close and personal with these animals. People will take photos, post them on the internet help with marketing for the area.
- Add facts about each animal so that they are informative as well as entertaining.
- Partner with local non-profits and your Art In Public Places Board.

18

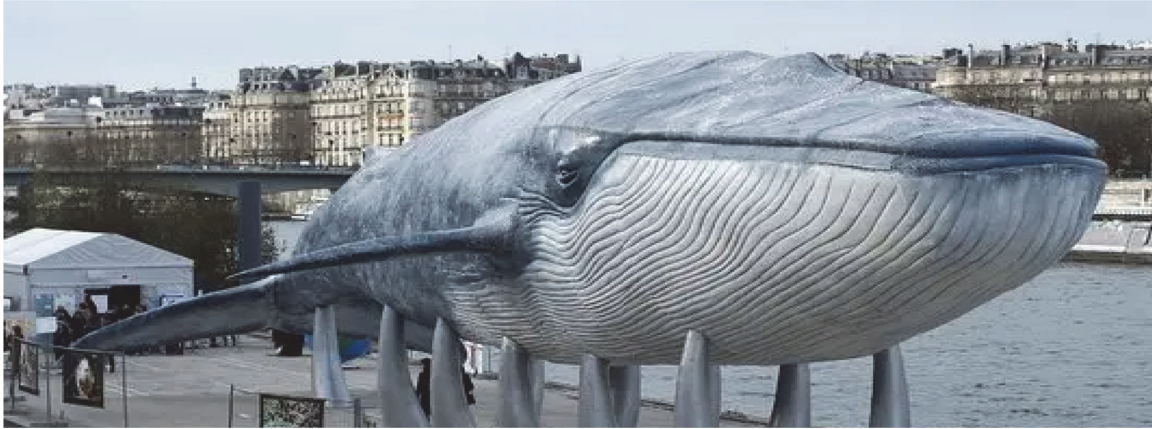
# Life-size, Life-Like Animals



# Life-size, Life-Like Animals



## Life-size, Life-Like Animals



**Maybe even a life size Blue Whale!**

21

## Kayak Launch and Community Dock

We would like to add another kayak and paddleboard launch with a community dock on the south side of the river. It will be at the end of the parking lot so people from all over the city can easily drive down, unload their gear, and take off from this spot. It will be floating so that it can change with the water level and be a great safe place to load and unload water toys! We already have local interest in helping us make this amazing! Many will stay before or after their activity to support downtown businesses. A future opportunity of this could include peddle boats as well for another way to enjoy the river!



22

## City “must” haves:

- ✓ **Public River Access** - both sides of the river have complete access and include riverfront walkways as well as a large dock with kayak launch right next to a public parking lot.
- ✓ **Activate Space** - restaurants and shops with indoor/outdoor style that will attract people. Also the fountains and lifesize animals will be an attraction that people will want to see and keep them down there for hours learning about each animal.
- ✓ **Open/Park Space** - at 2.7 acres of public green space, our proposal keeps more than half of this development as open/park space.

23

## City “must” haves:

- ✓ **Experiential Destination** - this mix of park and commercial will be a unique concept in downtown but also that the life size animals will be the thing that makes the difference for people wanting to come downtown. It will almost be like a non-living zoo where you can come and get close and learn about all sorts of animals.
- ✓ **Water features** - we are going to have a lot of fountains and shallow ponds to show off the water animals
- ✓ **Parking** - we have ample parking on both sides of the river and having covered parking is an added bonus

24

## City “must” haves:

- ✓ **Family appeal** - the lifesize animals and open park area will be a great place for families to come. This will be a place where kids will get to learn about these animals.
- ✓ **Landscaping and shade** - landscaping will new native Florida trees. All of the buildings will have large overhangs and plenty of covered space as well as large gazebos throughout the public green space.
- ✓ **Commercial Component** - on both the north and south side.
- ✓ **The gazebo structures in the green space will be open to the public to use.**

25

## City “must” haves:

- ✓ **Enhanced lighting** - lighted landscaping along the walking paths, animal replicas and along the river.
- ✓ **Year-Round Residential** - the mixed-use project will be geared towards year-round residents or hotel guests.
- ✓ **Broad Architectural Appeal** - This is high on the list of things we are looking for in future proposals and will not be overlooked. Character and architecturally pleasing lines as well as things like raw materials and living walls will all be things to focus on.
- ✓ **Developer Initiated-community Concept** – I have been meeting with representatives of the community who have helped develop these concepts.

26

## City “must NOT” haves:

- ✓ **NO Majority Residential** – we have limited residential units.
- ✓ **Limited Resident-Only Amenities (available for public)** – most of the land is public land.
- ✓ **No monolithic building** – even the NW corner commercial building is not large in comparison to the open, public space.

### One “must” have not listed:

- ✓ **Improve water quality in the Imperial River** – all open public space and the parking areas can be used to improve water quality by filtering or using bioreactors.

27

## Things Bonita Springs already has in the works

New community pool and fitness facility.

New library was just completed.

New food truck park near Riverside.

Amazing events already lined up throughout the upcoming years.

Continued success of the Wonder Gardens venue.

New streets and infrastructure throughout Downtown.

Potential new Adrenaline Park at the old Dog Track location.

28

## Things we would like to see improved

Added parking throughout downtown

- Add parking behind the Bandshell
- Add parking on Front Street
- Add parking off Felts/Wilson
- Redo parking on Childers/41
- Add parking at Depot Park
- Redo parking on Felts/Ragsdale

Liles Hotel being repurposed to Bonita Springs welcome center.

The sheriff's office being moved or rebuilt on site to help improve the appeal of the Banyan Tree lot and everything that is around it.

29

## Expected Downtown Growth

Our goal in this project is to jumpstart the rest of downtown and really show everyone that downtown Bonita is ready for their investment. Our project will encourage other projects like...

- Redevelopment of current businesses
- Remodeling of current homes nearby
- Construction of new homes nearby
- Remodeled or added apartments and condos
- Remodeled or added hotel space nearby

We believe this project will be one that compliments the rest of downtown and along with bringing people to the area to spend money will also increase value and tax revenue for the city in the overall downtown area.

30

## **Our Game Plan**

**This proposal is for the city to agree on the uses of the space and a general scope of the overall project moving forward.**

- ❖ **The south side park area**
- ❖ **The north side park area**
- ❖ **The south side commercial space and parking lot**
- ❖ **The north side mixed-use building with some form of residential component**

**This mix of space and clear use of the area is a compromise between highly developed land and complete park space. We believe by giving everyone 90 days to get us specific proposals of any or all of these sections we will come out with an amazing opportunity to move forward with a great project we can really all support. We will work with the other presenters to make this happen**

31

## **Long term plan**

**After the 90 days to submit all proposals, the council can then choose which proposals can move forward, based on criteria such as:**

- 1. The best fitting idea for the specific space**
- 2. The most benefit for the rest of downtown Bonita Springs**
- 3. The most likely project to succeed long term and be completed on time**
- 4. The most financial gain for the city now and into the future (purchase amount or lease rate and tax revenue into the future)**

**I believe the city should get an updated survey done of the land within the next 30 days so that developers can start planning off hard numbers. Typical due-diligence is 180 days, but with the survey done in advance, I think we can push for the winning proposals to have as little as a 90 day due diligence period before becoming shovel ready.**

32

## Long term plan

**This means all projects will be potentially shovel ready in the next 180 days.**

**This is feasible due to breaking the area down into smaller sections so that it can be planned and managed easier by each developing partner.**

**I have been working on this project for well over a year and have spent hundreds of hours and thousands of dollars on proposals to get this proposal to where it is today. Moving forward, I am willing to work with the city as a consultant to this project to be sure all 4 sections of this proposal are carried out as one amazing development. I will not have a monthly retainer, or any upfront fees. Instead, I would like to continue this process with the city at no cost and get paid by the two private developments upon completion. My fee will be 3% of the completed projects estimated value at the time of completion and will be paid for by the developer at the time of completion.**

**I believe I have a vision for how this entire parcel will turn out and I believe by helping the private developers work with the public we will create something amazing that all of downtown can enjoy!**

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## Thank you!



**Thank you for taking the time to look at our proposal and consider this as the best option for Downtown Bonita Springs.**

**For further information on this development please feel free to reach out anytime.**

- **Contact: Shay Trask**
- **Phone: 319.404.5810**
- **Email: shaytrask@gmail.com**

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## Aerial view from the southwest.



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## View from Wilson Street looking north.



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**View of the river and dock from the east.**



**Aerial view of the north parcel  
and the mixed-use building.**



**View from the mixed-use rooftop patio and pool area.**



**View from mixed-use 4th floor balcony.**





**View of the North side mixed-use building from the corner of Old 41 and Goodwin Street.**

41



**View from Old 41 looking southeast.**

42

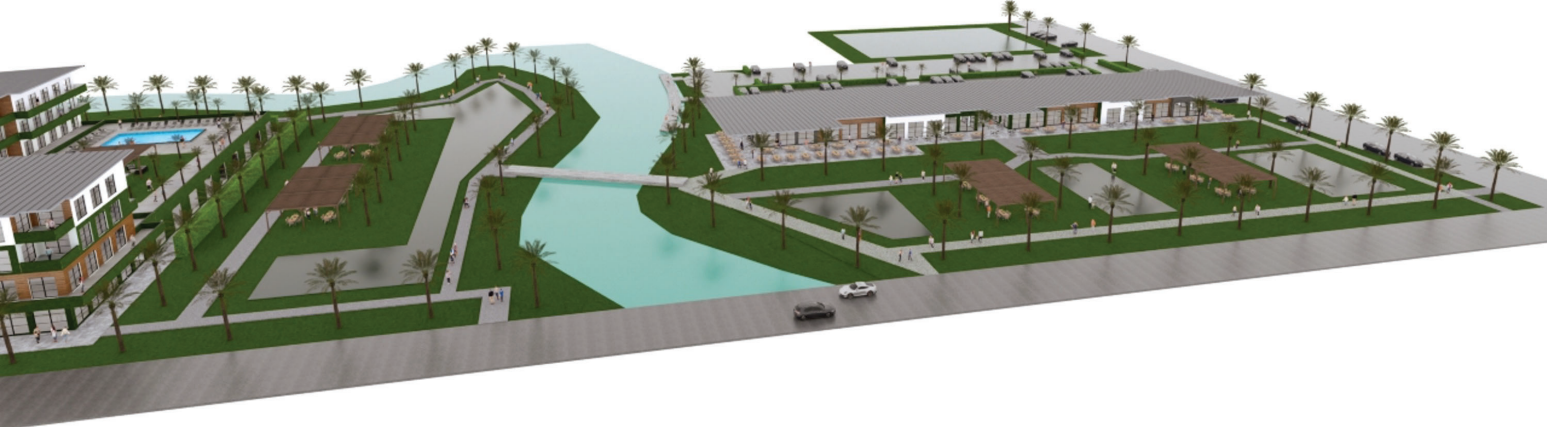


**View of the South Side main anchor tenant bar and restaurant.**

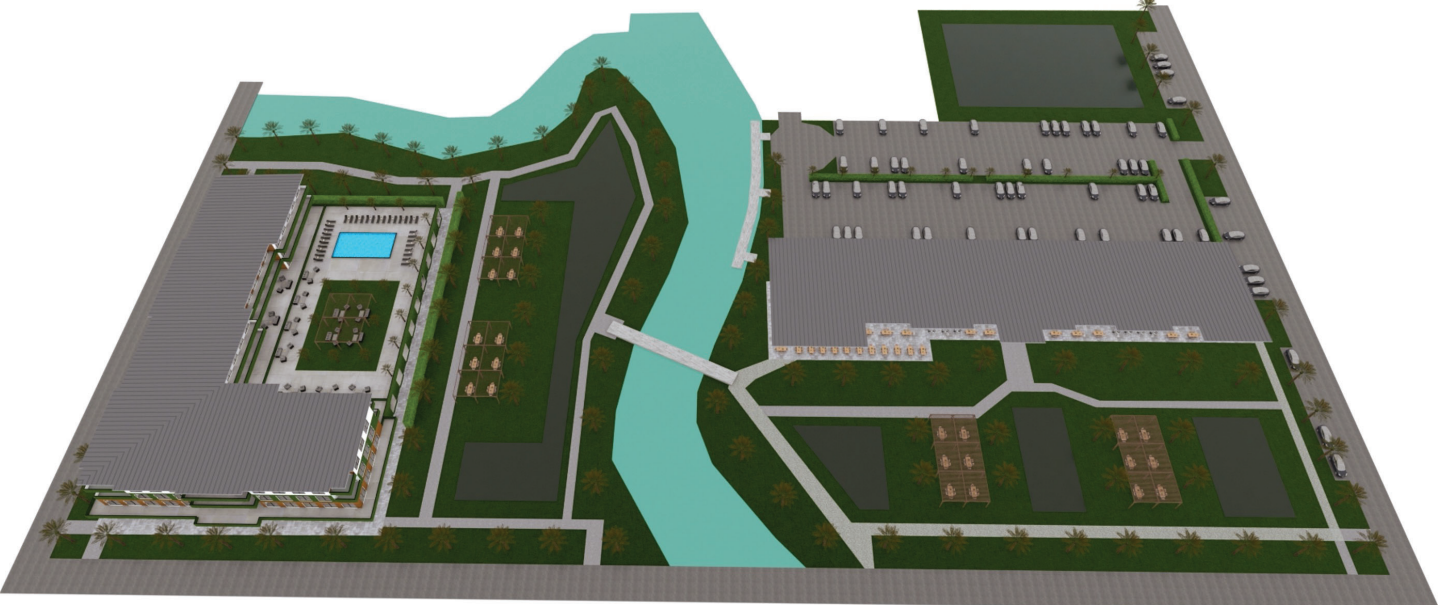
**View from Old 41 looking northeast.**



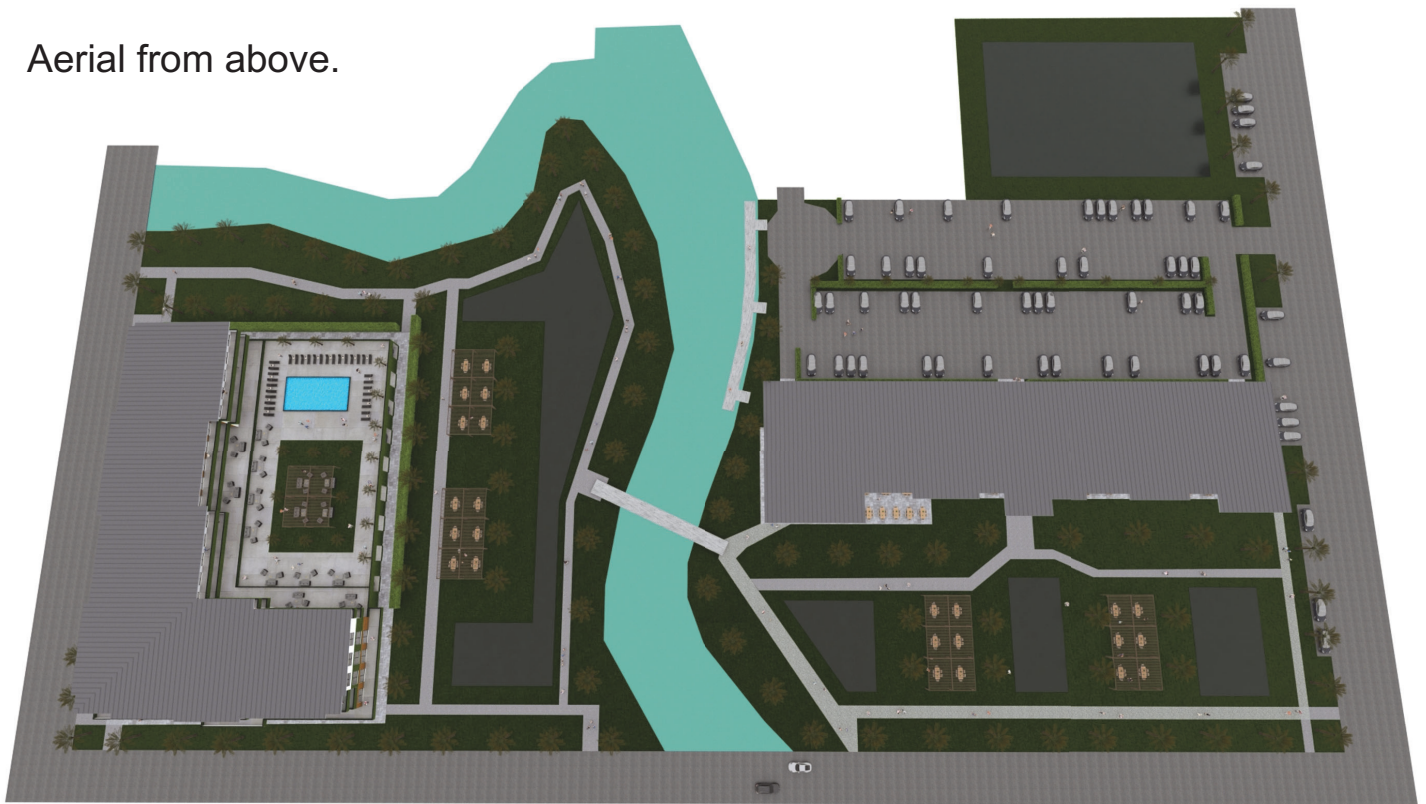
**Aerial view from the west.**



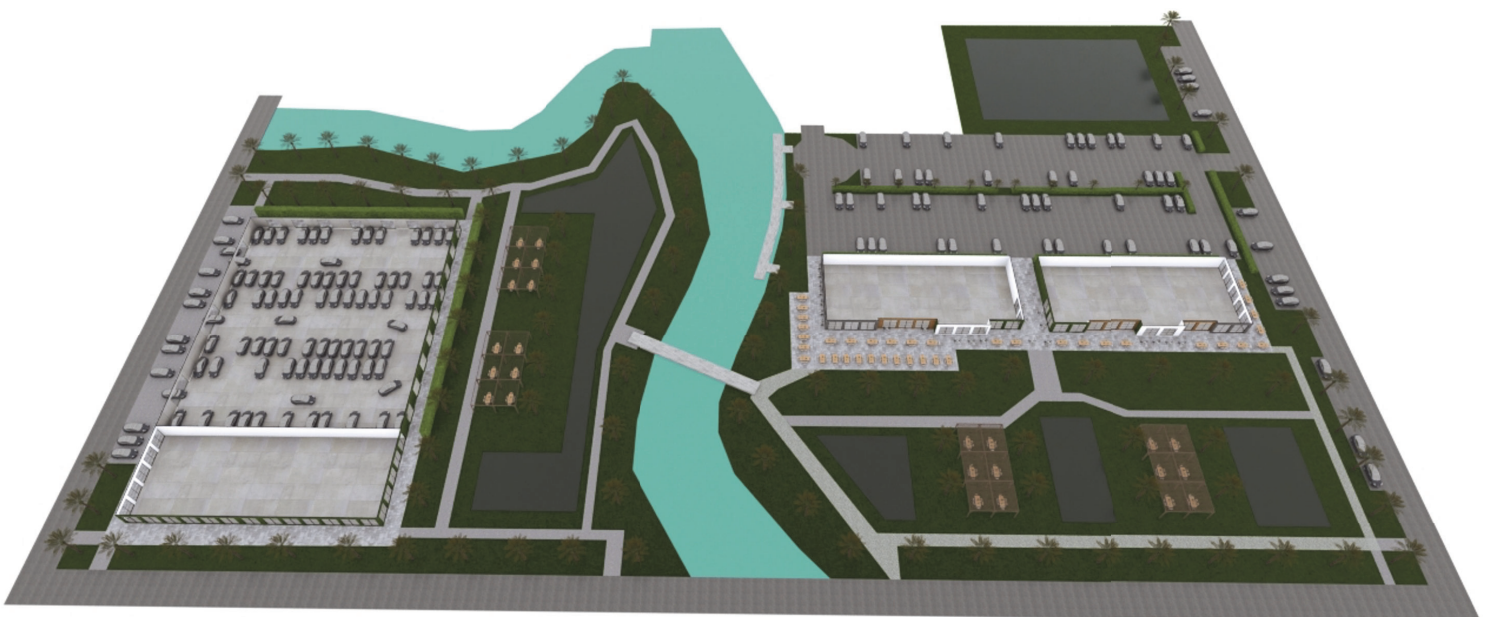
**Rooftop overall aerial.**



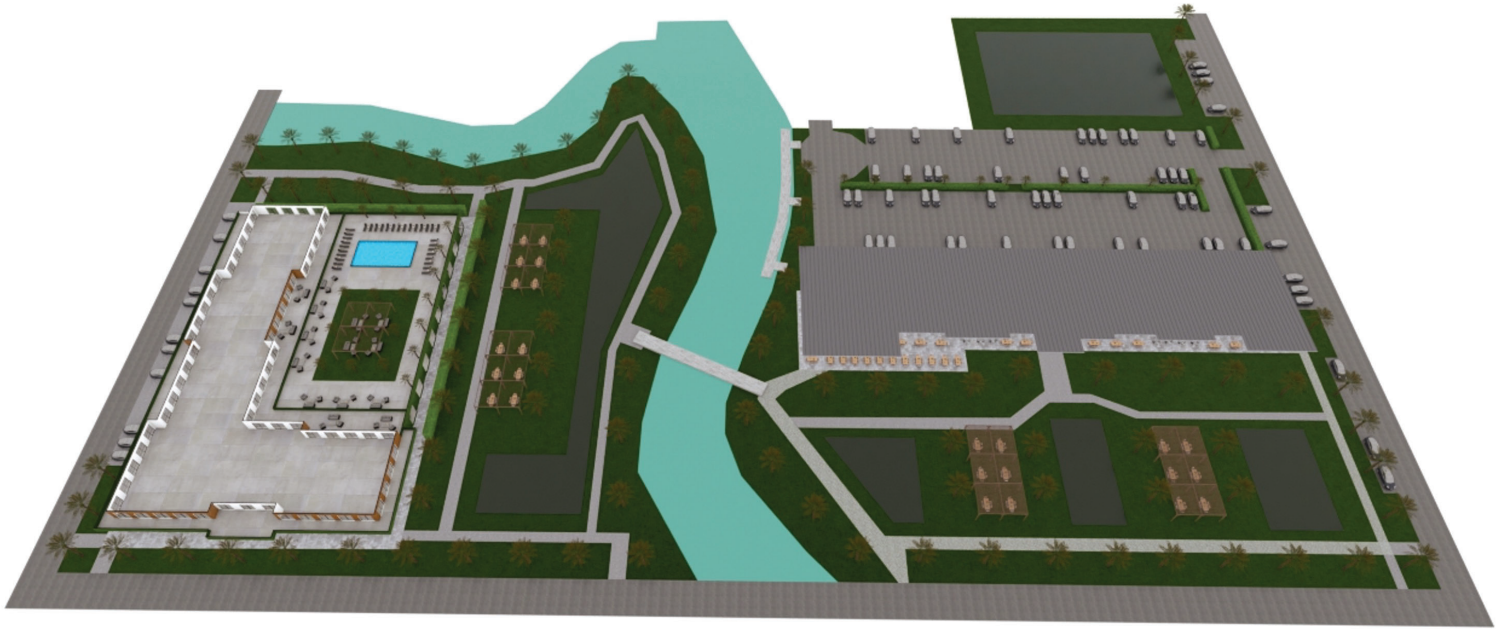
Aerial from above.



Ground floor exposed



Second level exposed.



49

**Thanks again for viewing our proposal of  
Imperial River Crossing in Downtown Bonita Springs!**



**Contact: Shay Trask**

**Phone: 319.404.5810**

**Email: [shaytrask@gmail.com](mailto:shaytrask@gmail.com)**

50

**REQUESTED MOTION:** Adopt proposed millage rate for fiscal year 2021-2022

**REQUESTOR:** Lisa Griggs Roberson, CPA, Finance Director

**AGENDA:** City Manager's Items

**STRATEGIC PRIORITY:** 7) Government Transparency

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**BACKGROUND:** On July 1, 2021, the Property Appraiser of Lee County, Florida served upon the City of Bonita Springs a Certification of Taxable Value certifying its taxable value.

Florida Statute Section 200.065, requires that within thirty-five (35) days of service of the Certification of Taxable Value upon a municipality, said municipality shall furnish to the Property Appraiser the proposed millage rate, the rolled-back rate, and the date, time and place at which a public hearing will be held to consider the proposed millage rate for the Fiscal Year 2021-2022 budget.

We have experienced an increase in total taxable value of 6.13%.

In fiscal year 2021-2022, the maximum millage rate allowed by a majority vote of the governing body is 1.2224 and is based on the rolled back rate of 0.7880 and adjusted 4.43% for the change in per capita Florida personal income. A two-thirds (5 out of 7) council member vote allows for a maximum millage rate of 1.3446.

The proposed millage rate for fiscal year 2021-2022 is 0.8173 mills (\$0.8173 per \$1,000 of assessed property value) which is equal to the prior year rate. This proposed millage rate is greater than the rolled-back rate of 0.7880 mills by 3.72%.

The two public hearing will be held on September 14, 2021, at 5:30 P.M. and September 29, 2021, at 5:30 P.M.

**STAFF RECOMMENDATION:**

Adopt proposed millage rate for fiscal year 2021-2022.

**ATTACHMENTS:** None

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**REVIEWERS:**

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Debra Filipek
Department Director:	Lisa Griggs Roberson

Council Action: Approved  Denied  Deferred  Other \_\_\_\_\_

**REQUESTED MOTION:** Appoint a City Council Member as the voting delegate for the City of Bonita Springs, for the Florida League of Cities Conference scheduled for August 12-14, 2021 at the World Center Marriot, Orlando, Florida.

**REQUESTOR:** Arleen M. Hunter, City Manager

**AGENDA:** City Manager's Items

**STRATEGIC PRIORITY:** No

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**BACKGROUND:** The Florida League of Cities 95<sup>th</sup> Annual Conference is scheduled for August 12-14, 2021, at the Word Center Marriott, Orlando, Florida. The League Bylaws require that each municipality designate one of their officials as the municipality's voting delegate. A Resolution is not required to be adopted, however, the appointed delegate is required to fill out the form supplied by the Florida League of Cities listing the designated voter. The Council Member appointed as the designated voter is required to be in attendance at the conference.

**STAFF RECOMMENDATION:** Appoint a City Council Member to be the voting delegate for the City of Bonita Springs for the Florida League of Cities Conference scheduled for August 12-14, 2021.

Attachment: Memorandum from Florida League of Cities

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director:

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_



To: Key Official

From: Eryn Russell, Florida League of Cities

Date: June 11, 2021

Subject: 95th Annual Conference Voting Delegate Information

The Florida League of Cities' Annual Conference will be held at the World Center Marriot, Orlando, Florida on August 12-14, 2021. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

It is important that each municipality designate one official to be the voting delegate. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida.

Conference registration materials were sent to each municipality via newsletter and are also available online at [floridaleagueofcities.com/education-and-events/annual-conference](http://floridaleagueofcities.com/education-and-events/annual-conference).

If you have any questions on voting delegates, please call (850) 701-3616 or email [erussell@flcities.com](mailto:erussell@flcities.com).  
**Voting delegate forms must be received by the League no later than July 28, 2021.**

Attachments: Form Designating Voting Delegate



**95th Annual Conference  
Florida League of Cities, Inc.  
August 12-14, 2021  
Orlando, Florida**

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities, designate one of their officials to cast their votes at the Annual Business Session. League By-Laws requires that each municipality select one person to serve as the municipalities voting delegate. *Municipalities do not need to adopt a resolution to designate a voting delegate.*

Please fill out this form and return it to the League office so that your voting delegate may be properly identified. **Voting delegate forms must be received by the League no later than July 28, 2021.**

Designation of Voting Delegate

Name of Voting Delegate: \_\_\_\_\_

Title: \_\_\_\_\_

Municipality of: \_\_\_\_\_

**AUTHORIZED BY:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Return this form to:

Eryn Russell  
Florida League of Cities, Inc.  
Post Office Box 1757  
Tallahassee, FL 32302-1757  
Fax: (850) 222-3806  
Email: [erussell@flcities.com](mailto:erussell@flcities.com)

**REQUESTED MOTION:** Direction to staff regarding professional services agreement with Capitol Strategies Consulting for legislative and agency lobbying services.

**REQUESTOR:** Arleen M. Hunter, City Manager

**AGENDA:** City Manager's Items

**STRATEGIC PRIORITY:** 1) Improve Storm Water Management, 2) Transportation, 3) Strengthen City Finances, 4) Environmental Protection, and 7) Government Transparency

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**BACKGROUND:** On August 19, 2015, City Council approved a professional services agreement with Capitol Strategies Consulting, Inc. to provide Florida legislative and Agency Lobbying Services to the City. The original agreement provided for a term of three years with the option for two renewals for one additional 12-month period each, at a rate of \$60,000 annually, inclusive of all costs, fees and expenses. On June 19, 2019 City Council approved the Second Renewal, which expired August 31, 2020; and on August 5, 2020 City Council approved the Contract for Professional Services with Capitol Strategies Consulting, Inc., which is set to expire August 1, 2021.

At this time, staff is seeking direction as to whether Council would like staff to commence negotiations with Capitol Strategies Consulting, Inc., for a new agreement. Upon Council's approval, staff will bring back the proposed agreement at the August 4<sup>th</sup>, 2021 City Council meeting.

**STAFF RECOMMENDATION:** Council's pleasure

**ATTACHMENTS:** Agreement

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**REVIEWERS:**

City Manager: Arleen Hunter  
City Attorney: Derek Rooney  
City Clerk: Debra Filipek  
Department Director:

Council Action: Approved \_\_\_ Denied \_\_\_ Deferred \_\_\_ Other \_\_\_\_\_

## CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into this 19th day of August by and between the **CITY OF BONITA SPRINGS** (hereinafter referred to as the "Client"); and **CAPITOL STRATEGIES CONSULTING, INC.** (hereinafter referred to as "Consultant"). In consideration of mutual promises set forth herein, it is AGREED BY AND BETWEEN THE CLIENT AND THE CONSULTANT THAT:

I. DESCRIPTION OF SERVICES. Consultant hereby agrees to assist and advise the Client with respect to matters and issues before the Florida Legislature and the Executive Branch that are of interest and importance to the Client.

II. COSTS OF SERVICES. The Client agrees to pay Consultant **\$60,000** annually, exclusive of costs for travel, for the services provided under this Contract during the Contract Period. Payments shall be made in equal monthly installments.

III. RELATIONSHIP OF THE PARTIES. The parties to this Contract agree that the Consultant shall provide professional services and that the relationship created by this Contract is that of owner-independent contractor. Consultant is not an employee, joint employee, or agent of the Client and is not entitled to any benefits provided by the Client.

IV. CONTROL OF WORK AND WORKMEN BY CONSULTANT. Except as otherwise provided herein, Consultant shall be solely responsible for the manner and means in which services are performed under this Contract, and Consultant shall direct the performance of all clerical assistance engaged in connection with the performance of such services. Consultant shall not subcontract for any of the work contemplated under this Contract without prior written approval of the Client, which shall not be unreasonably withheld. Consultant shall be responsible for and shall superintend the execution of all works covered by this Contract, either personally or through a representative. If Consultant uses a representative, Consultant agrees that the representative shall be competent and qualified, shall give their personal attention to the work hereunder at all times, and shall represent Consultant with full power to act in all matters pertaining to this Contract. Consultant shall pay all parties employed by Consultant directly.

V. COMPLIANCE WITH APPLICABLE LAWS. Both Consultant and Client shall comply with all applicable federal, state and local laws and regulations, including without limitation Chapters 11 and 112, Florida Statutes. Consultant and Client shall timely and accurately file any registration documents and reports required by such laws.

VI. TERM. This Contract is effective as of September 1, 2020, for an initial term ending on August 1, 2021. Unless terminated prior to the end of the initial term, the Contract shall automatically renew for successive annual contracts under the same terms as the preceding term. The initial and any successive terms shall hereinafter be referred to as the "Contract Period." New contract negotiations may commence thirty (30) days prior to the termination of any Contract Period, and may be used to agree to a new annual terms executed as an amendment to this Contract. Either Party, however, shall have the right to terminate this Contract upon thirty (30) days' written notice without cause. If either Party terminates this Contract upon 30 days' written notice, Consultant will receive compensation for services rendered through the date of termination.

VII. ASSIGNMENT. Neither Party may assign its interest under this Contract except with the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment shall operate to release the assigning Party from its obligations by the other Party.

VIII. INUREMENT. This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Nothing contained in this Contract, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.

IX. WAIVER. No waiver by any Party of one or more defaults by any other Party in the performance of any provisions of this Contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

X. ENTIRE AGREEMENT. This Contract represents the entire understanding between the Parties relative to the matters addressed herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein.

XI. AMENDMENT. This Contract may not be amended without the execution of a written document by all Parties hereto.

XII. GOVERNING LAW AND VENUE. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws. Venue for any litigation arising out this Contract shall be Lee County, Florida.

XIII. ATTORNEYS' FEES. In the event litigation arising out of or in connection with the enforcement of this Contract or any dispute arising out of this Contract, the prevailing party shall be entitled to recover all attorneys' fees, costs

including expenses incurred in connection with such litigation proceeding, including all costs or fees incurred on appeal.

XIV. SEVERABILITY. If any term, provision, covenant or restriction of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect.

XV. COUNTERPARTS. This Contract and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, binding on all Parties hereto and the signature of any Party to any counterpart. The Parties shall execute two originals of this Contract. One original will be retained by the Consultant and the other original shall be retained by the Client.

CAPITOL STRATEGIES CONSULTING, INC.

By: Camel Green

Title: Partner

Date: 8-28-20

**CITY OF BONITA SPRINGS:**

ATTEST:

Derek Rooney  
CITY CLERK

Peter Simmons  
Peter Simmons, Mayor

Date Signed: 8/24/2020

Derek Rooney  
For Derek Rooney, City Attorney

CITY COUNCIL  
CITY OF BONITA SPRINGS  
WEDNESDAY, JUNE 16, 2021  
9:00 A.M.  
CITY HALL  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FLORIDA 34135  
MINUTES

1. Call to order:

Mayor Rick Steinmeyer called the meeting to order at 9:00 A.M.

2. Invocation:

Pastor Russ Winn, with The Springs Outdoor Church, furnished the invocation.

3. Pledge of Allegiance

At the request of Mayor Steinmeyer, Debra Filipek, City Clerk, led in the Pledge of Allegiance.

4. Roll Call:

Mayor Steinmeyer and all Council Members were in attendance.

5. Approval of Agenda

6. Mayor's Welcome

7. Public Comment on Agenda Items

Sandy Esmon commented on proposals for downtown. Not be swayed by glass and concrete and over done landscaping. Keep small town charm. Follow lead of those existing small businesses in downtown and maintain the ambiance of the Old 41 Corridor.

John Paeno thanked Council for taking the time to listen to the people and listening to their suggestions.

Chris Griffith, representing property on Riverside Drive, stated she was here to answer any questions Council may have.

Dwight Esmon addressed the agenda item regarding the purchase on Riverside Drive. Did we pay for it? He addressed concerns he had with the purchase of the property.

Charlie Strader thanked Council Member Purdon for placing his presentation on the agenda for the workshop.

Trish Leonard resident of downtown Bonita Springs and President of the Downtown Alliance. Whatever decision Council makes regarding downtown, she will support.

Zannos Grekos also addressed the Bamboo site.

An unidentified woman stated that the Bamboo is a gem. She is counting on Council to make the right decision.

8. Zoning and land use items:

- A. A Zoning Resolution of the City of Bonita Springs, Florida; considering a request for a Special Exception within the U.S. 41 Overlay to allow a vehicle and equipment dealer Group II and III use on approximately 11+/- acres within an existing Commercial Planned Development zoning district; located at 28450 South Tamiami Trail, Bonita Springs, FL 34134; providing for an effective date. (Greensheet No. 21-06-129)

9:10 A.M.

Mike Fiigon, Community Development, provided the history of the case. The Zoning Board heard the case last month and recommended approval of the request.

Paula McMichael with Hole Montes, provided a Powerpoint presentation. Power Lodge will occupy the portion of the building that was once a car dealership. Staff recommended approval and they are in agreement with Staff's recommendation of approval.

Tom Dean, owner of Power Lodge Florida, provided a brief overview. The large portion of his business is watercraft. Residents behind him are concerned about noise.

Council Member Jesse Purdon motioned approval; Council Member Amy Quaremba seconded.

At the request of Council, Mr. Fiigon furnished a brief overview of the conditions of approval.

Mayor Steinmeyer reported letters he received regarding their concerns on noise. He's going to vote against it.

Council Member Laura Carr stated she is concerned with the noise to neighbors.

The motion passed 6-1 (Mayor Steinmeyer opposed) **ADOPTED ZONING RESOLUTION NO. 21-03**

<p><b>RESULT: UNANIMOUS</b> <b>MOTION BY: Council Member Purdon</b> <b>SECONDED BY: Council Member Quaremba</b> <b>AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes</b></p>
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- 9. Consent Agenda: (Note: Items on the Consent Agenda will be considered as one unless a specific item is removed by a Council Member for separate discussion.)

Council Member Carr motioned approval of the Consent Agenda; Council Member Quaremba seconded; and the motion carried unanimously.

<p><b>RESULT: UNANIMOUS</b> <b>MOTION BY: Council Member Carr</b> <b>SECONDED BY: Council Member Quaremba</b> <b>AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes</b></p>
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- A. Review and approve the mobile food vendor request for 3600 Bonita Beach Road, Bonita Springs, Florida 34134 (Greensheet No. 21-04-128)
- B. Adopt a Resolution to add Change Order No. 2 to the Spring Creek/Bonita Springs Golf Course Flood Improvement Project with Singhofen & Associates, Inc. for the design of stormwater improvements

in the amount of \$66,282, bringing the total amount to \$176,163. (Greensheet No. 21-06-131)  
**ADOPTED RESOLUTION NO. 21-52**

- C. Approve Twelfth Addendum to Second Agreement for Law Enforcement Services. (Greensheet No. 21-06-138)

10. Opportunity for City Council comments on Consent Agenda Items.

11. Proclamations and Presentations:

- A. Presentation on Emergency Preparedness and introduction of partner agencies. (Greensheet No. 21-06-127)

Tony Backhurst, Neighborhood Services Director, provided a PowerPoint presentation on Hurricane Preparedness (copy in Clerk's file).

9:39 A.M.

Sandra Tapfumaneyi, Lee County Public Safety Director, provided a brief overview of the County's operations system as it relates to the County level. Anyone wanting more information can go to [www.leegov.com/hurricane](http://www.leegov.com/hurricane) for more information.

Council Member Corrie stated that the two biggest areas of concern he heard with Irma regarded 1) identification of hurricane shelters, and 2) electricity, as no one he could talk to had the ability to talk to FPL to get information on what the game plan was to restore electricity by neighborhood or by areas. His hope is that there are communications between FPL and Lee County to ensure FPL are maintaining their junction boxes, etc. His last concern relates to debris, to him it seems that we were at the mercy of FEMA with respect to do debris removal and who they were contracting with as to when areas would have their streets cleared. We were never able to get an idea of their schedule or how long the contractor was going to be in place, or the number of contractors. His hope is that there is better communications with FEMA.

- B. Presentation and review of the Monthly Financial Report. (Greensheet No. 21-06-126)

9:48 A.M.

Lisa Roberson, Finance Director, provided a PowerPoint presentation (copy in Clerk's file) to furnish an overview of the Monthly Financial Report.

12. Mayor and Council Member Items:

- A. Authorize staff to coordinate with Bonita Springs Utilities and submit a grant proposal for a Septic and Sewer Project to the Florida Department of Environmental Protection Water Protection Grant. (Forbes; Greensheet 21-06-130)

9:53 A.M. short recess was taken to 10:04 A.M.

Council Member Fred Forbes furnished a brief overview of this item, involving a grant for septic tank conversion, which includes both State and Federal monies. The request is for permission for Staff to work with Bonita Springs Utilities (BSU) on a joint grant with the City. City Manager Hunter stated that Staff will need to bring something back to Council at their July 7, 2021 meeting, and depending on how it is, Staff may ask if they need to take action on it. Staff did have some preliminary conversations with DEP and BSU. BSU is a non-profit and as such, they qualify as a partner for the City. BSU needs to work with the City on providing additional information for the grant. Direction to Staff was given to move forward.

Council Member Purdon spoke in support of moving forward. City Manager Hunter stated it would be an agenda item on the budget for Council to take action on. Council Member Quaremba stated she will

Council Member Quaremba stated she is very much in favor of going for this funding. The report from FGCU she had suggested that the first thing that needed to be done was to figure out practical steps of exploring potential problems we have. It is the case that we have septic systems within Bonita Springs, but the vast majority of them have already been converted. She feels what needs to be done is to explore those that are within the watersheds of both Spring Creek and the Imperial River, since those that are in the watershed are the ones that can have potential problems. John Jenkins gave a presentation at the Downtown Alliance in which he described the efforts being done by BSU to analyze concentrations of septic systems and where he thought there would be a need. He also described a process by which they regularly address piping systems, as they know the age of the pipes within the community, and they, on a regular basis, replace them. Overall, she feels its important that Council gets full information about this rather than to stir up the Populus which may not be necessary, and if there's a problem take care of it. She didn't feel they had the full story. She would like to have a full discussion of this and have a clear understanding given to the people about potential problems.

- B. Discussion regarding opportunity to purchase the property located at 27101 S. Riverside Drive. (Mayor Steinmeyer; Greensheet No. 21-06-139)

10:11 A.M.

Mayor Steinmeyer provided an overview of this item involving property that's for sale by the owner, David Piper, that borders Island Park. He further addressed the history of the walkway and further addressed. He supports the purchase. The request today is for the City to move forward with due diligence. City Manager Hunter explained that prior to purchasing the property the City would do due diligence, i.e., an appraisal, a title search, etc., and bring it back to Council before any agreement would be signed for purchase. Staff should have some additional information by Council's next regular meeting, July 21, 2021, with an appraisal and a sample contract. City Attorney Derek Rooney stated that if Council's provides direction today to move forward, the appraisal will probably be the slowest portion of that, so he would look to probably have a purchase and sale agreement back before City Council July 21, 2021.

Council Member Quaremba requested a clarification on the providence of the surrounding access point, from the legal standpoint. She would also like to have Staff report on the need for this and how it would be integrated with the rest of the park. She would also be interested in the appraisal that would be forthcoming, and until Council knows whether it's needed or not, she doesn't see how we could proceed, but we can do this concurrently – the professional steps that are always done.

Council Member Mike Gibson concurred with Council Member Quaremba. He also would like to see what the need is for it. He would also like to know, if the City doesn't purchase it, do we still keep the access to Island Park that is currently there. He would also like to know what exactly we would be doing with it, as he really doesn't want to see a parking lot there since it right next to residential homes. Is it a buildable lot if we still have the access there.

Council Member Carr stated she echoed comments from both Council Members Quaremba and Gibson. She questioned why we would purchase it right now when prices are high.

Council Member Jesse Purdon stated that looking at it he kind of likes it. It would provide the ability to improve the entrance to Island Park. He also feels the price of \$150,000 is a steal. Overall, if the City can improve Island Park, and purchase the property for \$150,000 and guaranteed that no one builds there, he feels it's a good deal.

City Attorney Rooney stated that Staff will also bring back additional guidance as to the use of the property. The concern would be if the lot is buildable and built upon, that's the toe under tent to someone

complaining that there's a public pathway right next to their house, and eventually closing it off. Staff will bring back the due diligence and a proposal for what could be used for the property.

- C. A Resolution appointing a Member to the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals (Zoning Board) to fill a vacancy on the Board. (Mayor Steinmeyer; Greensheet No. 21-06-134) **ADOPTED RESOLUTION NO. 21-53**

A ballot vote by City Council was taken.

Council Member Gibson motioned the appointment of Gerald Benson to the Zoning Board, and Robert Lombardo to the Local Planning Agency; Council Member Quaremba seconded; and the motion carried unanimously.

**RESULT: UNANIMOUS**  
**MOTION BY: Council Member Gibson**  
**SECONDED BY: Council Member Quaremba**  
**AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes**

- D. A Resolution appointing one Member to the City of Bonita Springs Local Planning Agency to fill a vacancy on the Board. (Mayor Steinmeyer; Greensheet No. 21-06-136) **ADOPTED RESOLUTION NO. 21-54**

Motion above with Item C.

13. First reading of the following Ordinance:

- A. An Ordinance of the City of Bonita Springs, Florida; amending the Bonita Springs Land Development Code, Chapter 7- Environment, Natural Resources and Marine Facilities, Structures and Equipment—Article XII— Dock and Shoreline Structures; providing conflicts of law, severability, codification, scrivener's errors, and modifications that may arise from consideration at public hearing, and an effective date. (Greensheet No. 21-06-135)

Mayor Steinmeyer motioned to move to second reading; Council Member Gibson seconded; and the motion carried unanimously.

**RESULT: UNANIMOUS**  
**MOTION BY: Mayor Steinmeyer**  
**SECONDED BY: Council Member Gibson**  
**AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes**

14. Second Reading and Public Hearing of the following Ordinances:

- A. An Ordinance of the City of Bonita Springs, Florida; amending the Bonita Springs Land Development Code, Chapter 4 – Zoning, to update the thresholds for developments of City impact, providing for conflicts of law, severability, codification, scrivener's errors, and modifications that may arise from consideration at public hearing, and an effective date. (Greensheet No. 21-06-133)

Jackie Genson, Community Development, provided an overview of changes.

No public comments were made.

Council Member Gibson motioned adoption of the Ordinance; Council Member Quaremba seconded; and the motion carried unanimously. **ADOPTED ORDINANCE NO. 21-5**

**RESULT: UNANIMOUS**

**MOTION BY: Council Member Gibson**

**SECONDED BY: Council Member Quaremba**

**AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes**

- B. An Ordinance of the City of Bonita Springs, Florida, amending the Bonita Springs Land Development Code, Chapter 4 – Zoning, to amend Sec. 4-898 – Permitted Uses within the Bonita Beach Road Corridor Overlay District, Sec. 4-868 – Uses for the Downtown Form-Based Code, and Article VI, Division 26- Parking; providing for conflicts of law, severability, codification, scrivener’s errors, and modifications that may arise from consideration at public hearing and an effective date. (Greensheet No. 21-06-132)

Jackie Genson, Community Development, provided an overview of changes.

No public comments were made.

Council Member Gibson motioned adoption of the Ordinance; Council Member Forbes seconded; and the motion carried unanimously. **ADOPTED ORDINANCE NO. 21-06**

**RESULT: UNANIMOUS**

**MOTION BY: Council Member Gibson**

**SECONDED BY: Council Member Forbes**

**AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes**

15. City Attorney’s Items

- A. Consider a Letter of Intent from Barron Collier Companies regarding Imperial Crossing. (Greensheet No. 21-06-140)

10:36 A.M.

City Attorney Rooney informed Council of an additional Letter of Interest that was received since Council’s last meeting regarding the Bamboo/Imperial Crossing site, from Barron Collier Companies. His recommendation would be to, essentially, set this on the table until such time Council has had an opportunity to hold their workshop to address what Council’s goals are for the property.

Nick Casalanguida with Barron Collier Companies, stated he will present at the workshop.

16. City Manager’s Items

City Manager Hunter reminded all that the July 7<sup>th</sup>, 2020 meeting will be the first budget workshop. Any action items will be placed at the beginning of the agenda. Also, she and Matt Feeney will be attending a meeting with State Representative Adam Botana tomorrow with members of the SFWMD, Staff and Lee County Staff to discuss some preventative flooding measures. She will report back to City Council. Additionally, she informed all that the Little League Team, the 9, 10 and 11 year olds are now the District Champs! They are moving on to sectionals. She will continue to follow them, and pass onto Mayor and Council how appreciative they are of the fields and the compliments they received from the Cape Coral families.

17. Mayor and Council Member Reports

Council Member Quaremba reported on the Blue Zones Steering meeting she attended and a survey they are conducting. They are asking everyone to participate in a project called “real age.” She can provide the information for anyone who would like to participate. She next reported on the Veteran’s Committee

meeting she attended and addressed their current project. She also reported on the Art and Public Places Board meeting, and the ceremony for the sculpture.

Council Member Purdon provided an update on water from the federal side. He appreciates all the hard work and public comment regarding the Bamboo property and thanked all for their participation.

Council Member Carr stated that Nigel Fullick donated the statue from Dale Rogers. She also reported on the luncheon with Senator Kathleen Passidomo stated that she is working with the Governor on getting the City the funds he vetoed.

Council Member Forbes reported that he was appointed by the Florida League of Cities to the Fast Flying Committee, which he explained. He's also excited about the proposals received thus far. He's looking forward to the workshop.

Council Member Corrie echoed comments made regarding the workshop. He also asked that they grant an exception to the normal process of not video taping the workshops. He would like to have it televised; Council Member Quaremba seconded. City Attorney Rooney stated if there's a consensus, they would move forward.

Mayor thanked the Veterans Committee for the great Memorial Day presentation was fantastic. He also reported on the Tree Advisory Board meeting, who would like to keep the same budget they have had the last couple of years.

18. Approval of Minutes: 05/19/21 and 06/02/21

Council Member Corrie motioned approval of the Minutes; Council Member Gibson seconded; and the motion carried unanimously.

<p><b>RESULT: UNANIMOUS</b> <b>MOTION BY: Council Member Corrie</b> <b>SECONDED BY: Council Member Gibson</b> <b>AYES: Mayor Rick Steinmeyer, Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes</b></p>
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19. Public Comment

Dwight Esmon thanked Council for voting to live stream the workshop.

John Paeno thanked Council Member Purdon for his work on water quality for the river and environment.

20. Adjournment

There being no further items to discuss, the meeting adjourned at 10:54 A.M.

Respectfully submitted,

\_\_\_\_\_  
Debra Filipek, City Clerk

APPROVED:  
CITY COUNCIL

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

AUTHENTICATED:

\_\_\_\_\_  
Rick Steinmeyer, Mayor

DRAFT

CITY OF BONITA SPRINGS  
CITY COUNCIL WORKSHOP  
WEDNESDAY, JUNE 16, 2021  
TO BE HELD IMMEDIATELY FOLLOWING THE REGULAR CITY COUNCIL MEETING  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FLORIDA 34135  
MINUTES

1. CALL TO ORDER

Mayor Steinmeyer called the workshop to order at 11:13 A.M.

2. ROLL CALL

Mayor Steinmeyer and all Council Members were present.

3. PUBLIC COMMENT

Barbara Ogle, a member of the Bonita Citizens Group, read a letter into the record from Carson Young, addressing changes that occurred in the historic area of Bonita Springs, including Bamboo Village. It is vital to him that this area functions as a public space that will be available to serve everyone. He looks forward to the Bamboo Village becoming a place where the social, economic, and environmental health of the City are furthered, and feels it would be a shame if the area is designed to accommodate more apartments or condos, especially when there are 20,000 units of housing within two miles of the historic district now. He would urge Council to keep in mind the needs of the public as a whole, and to thoughtfully weigh those needs against desires of a development group.

John Paeno stated he feels that there is enough residential in downtown. He suggested Council consider a museum, and/or other attractions, including perhaps a small mall.

Bruce Galloway urged Council to listen carefully to what the presenters are saying today. He suggests listening to their advice and thinking differently for development of the site. A parking lot with a shopping center will not help the corridor. He suggests creating a place with unique features that will bring a great quality of life to the citizens. He further addressed.

Sondra Gibbons, a resident of Villagewalk of Bonita, feels the Barron Collier proposal is probably the most attractive of the proposals that have been presented so far. She would like Council consider two points, the first is her concern with the residential portion, addressing investment properties and associated problems with these uses. Her second concern is with moratorium on due diligence Barron Collier is requesting. She feels the process needs to remain open for offers to keep coming in.

Marive' King-Neweman, provided a Powerpoint presentation to show photos of developments in other areas for the purpose of integrating water.

An unidentified gentleman, stated he is a developer in Bonita, and would encourage City to look at the proposals from a business standpoint as a backup. He would also encourage a working group for an attraction to make it a regional, if not, international destination.

Jim Weeks stated there is a need to consider what the businesses feels should be done with the parcel.

Dwight Esmon Barron Collier's proposal seems more attractive, to which he expanded.

An unidentified gentleman addressed the site referring the New York City.

Discussion was held on the Council process for the workshop.

4. INTRODUCTION OF MEETING FACILITATOR, KENNETH TINKLER, AND STAFF  
OVERVIEW OF WORKSHOP

12:52 P.M.

City Attorney Rooney introduced Kenneth Tinkler and addressed the process going forward.

12:55 P.M.

Kenneth Tinkler, meeting facilitator, explained that the goal today is to get to a point to provide direction to staff and how to move forward. He further addressed and posed several questions of Council and consensus was to go forward with a hybrid list to include the “must haves” vs. dividing it up of which is to pursue a hybrid approach with a list of things Council wants and does not want to see. The following list was created:

High level list:

- a. Hybrid approach (include “must have” component)
  1. Public river access
  2. Activation of the space
  3. Open/Park space
  4. Experiential destination
  5. Water Features
  6. Parking
  7. Family appeal
  8. Landscaping (shade)
  9. Commercial component
  10. Meeting space (structure)
  11. Enhanced lighting
  12. Year round residential
  13. Broad Architectural Appeal
  14. Involve community in design process

City “must not” haves:

1. No majority residential
2. limited use of residential; only amenities (available to public)
3. Don’t want to see monolithic building structures

Mr. Tinkler stated that Council has come up with a concept for an invitation to bid, using the hybrid approach for the City as designated, i.e., this is what you want to see. City Attorney Rooney, in response to Council Member Purdon, stated that when each of these proposals came in, he recommended Council not take any action until Council comes to an agreement. This also provided each of the proposers the opportunity to listen to Council and tailor their project. One or more of the projects meet a large number of this criteria, but even if there was an individual project that was enough to hit all these points, there will still be a process to go through of selecting them, developing the interim agreement, etc. It’s up to Council to say that this is enough to us, looking at this list, that Council is in the position looking at the proposals submitted to pick one or more and send them back to tailor their project and move forward, or does Council want to do an invitation to bid and put this out on the street with these concepts and invite the prior proposers and anyone new to come in. The idea is to get to a target, and until today, we didn’t have a list of that target criteria, and allow Council to move forward. What Mr. Tinkler is asking now, does Council want to convert this into an RFP or does Council want to take some other action based on what Council has. Direction is needed so Staff can put that together. Council

Member Purdon, stated that, from a financial standpoint, going out to bid doesn't seem like a necessary functionality at this point. He further addressed, stating that he is ready to figure out if Council can move in a direction down the road without actually signing anything to say "this is the people we're picking" but at least we're voting. Council Member Carr echoes comments by Council Member Purdon, but she would also say the ribbon would be do you have the money up front, and ready to go, cause we want this started. Is there financing that needs to be signed because there are people for years are still looking for financing. Mr. Tinkler stated it sounds like there are two alternatives. You can take this which is the criteria that will be applied through the proposals already received, and decide who Council wants to move forward with, or this is the criteria that Council wants to make an invitation for others to send ideas – option 1) use this as the judgement criteria, or option 2) put this back out.

Mr. Tinkler stated that there is consensus of Council that these are the major points, their assessment, and that Council is looking to judge what has been submitted based upon this criteria. City Attorney Rooney stated that there are essentially five proposals, but only one is within enough high definition to really check against these. Proposals by Noah Properties and others have sent concept plans but are not as formal. He asked if Council would like staff to use this as a template to tell the existing proposers that Council wants to see their revised concepts by "x" date, and then Council can choose at that point to pick the one they want to move forward with. Council can also continue to accept others in the meantime, but the idea is that Council can utilize this for an invitation bid; you can use it right now to compare to the existing bids. He asked if Council wants to give everyone, including the ones that are most concrete, Shay Trask and Barron Collier, the opportunity to touch them up bring them back to Council. Council Member Gibson stated that it depended on the time frame, as he wants this to be sooner than later. Council Member Quaremba disagreed, stating that she didn't believe that there's enough time to give the others. She feels there is a need to be fair to everyone that's come forward. In her view there's only one that meets the criteria. Discussion was held.

#### 5. PRESENTATIONS BY A MEMBER OF THE PUBLIC AND DEVELOPERS THAT SUBMITTED DEVELOPMENT PROPOSALS OR PURCHASE OFFERS TO THE CITY

The following have provided Powerpoint presentations to address their suggested proposal/plans and ideas for the Bamboo parcel.

##### A. CHARLIE STRADER, SPONSORED BY CITY COUNCIL MEMBER JESSE PURDON

11:52 A.M.

Charlie Strader provided a Powerpoint presentation (copy in Clerk's file) which he stated was to provide justification, funding options, and design components for public use of the Old Bonita Village property.

##### B. SHAY TRASK

12:04 P.M.

Shay Trask also furnished a Powerpoint presentation to address his new proposal, which entails a more strategic RFP.

##### C. NOAH PROPERTIES LLC

12:10 P.M.

Hubert provided drawings and Boards to address his proposal for the property. They would like formal direction, i.e. RFP, etc.

##### D. HOVLAND REAL ESTATE

12:17 P.M.

Mr. showed a short video of projects they have done in Chicago.

E. BARRON COLLIER COMPANIES

12:20 P.M.

Provided a PowerPoint presentation (copy in Clerk's file).

6. DISCUSSION OF AVAILABLE OPTIONS FOR THE CITY-OWNED BAMBOO PARCEL

2:26 P.M.

City Attorney Rooney stated he would recommend, in Chapter 255 there is a process for public-private partnership, and as long as there is a qualified public project. In this case there is a significant amount of park space that would otherwise have to go through city procurement policies, competitives and solicited negotiations. Under this process we could utilize all of the unsolicited proposals and notice them that we are going to consider selecting one. We would have time to do that before Council's second meeting in July, give them time to revise the proposals, and if anyone else wants to submit they can do so, which he further explained. You have the people who have been paying attention, and he feels it's a fair process to allow them to look at the first one of what this Council wants to do, and adjust their proposals according, and Council would make a selection, and at that point we would enter into an interim agreement with them to continue working out the details of the project before there is any kind of formalized project. Council consensus to bring back on July 21, 2021. City Manager Hunter explained that in levels of this sort of Letter of Interest or Request for Proposals, Council has been the selection committee. Staff would provide a summary of the background information and the criteria on sheets for Council to check off. Council Member Quaremba suggested July 21<sup>st</sup> be the date for the receipt of the revised proposals, and then staff could use their time to come up with a summary. City Attorney Rooney stated he would go with the City Manager's recommendation which is July 21<sup>st</sup> as the target date to bring this back, and if it needs to go to August 4<sup>th</sup>, as staff needs time to get everything to Council. City Manager Hunter stated it would be a very high-level report from Staff.

7. ADJOURNMENT:

There being no further items to address the workshop adjourned at 2:32 P.M.

Respectfully,

\_\_\_\_\_  
City Clerk

APPROVED:  
CITY COUNCIL

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

AUTHENTICATED:

\_\_\_\_\_  
Rick Steinmeyer, Mayor