



City Council Chambers
9101 Bonita Beach Road
Bonita Springs, Florida 34135

CITY COUNCIL MEETING AGENDA

September 7, 2022
5:30 p.m.

If you plan to address the City Council, please complete a “Public Comment Card” located on the table outside of Chambers. Completed comment cards should be submitted to the City Clerk who sits to the left of the podium prior to the start of the meeting.

To submit your public comment in writing, please email your name, address, and comments to CITYMEETINGS@CITYOFBONITASPRINGS.ORG. **Any written public comment must be received by 2:00 p.m. on September 7, 2022.**

The City of Bonita Springs will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income, or marital status. To request an ADA-qualified reasonable modification at no charge to the requestor, please contact Lisa Roberson by calling (239) 949-6262 at least 48 hours prior to the meeting.

If a person decides to appeal a decision made by the Council on any matter at this meeting, such person must have a verbatim record of the proceeding to include the testimony and evidence upon which such appeal is to be based.

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Mayor’s Welcome
7. Public Comment on Agenda Items
8. Proclamations and Presentations:
 - A. Presentation of 10 Years of Service Award to City Employee Matt Feeney
 - B. Update on status of Imperial Crossing draft lease agreement with Barron Collier. (Green Sheet No. 22-09-153)

9. Consent Agenda:

- A. Approve the Parks and Recreation Agreement between the City of Bonita Springs and the Casa Mexico Adult Soccer league for the 2022-2023 soccer season. (Green Sheet No. 22-09-144)
- B. Approve the Bald Eagle Management Plan for bald eagle nest LE050 located on the City's River Park property, in accordance with LDC Chapter 7 Article III – Bald Eagles. (Green Sheet 22-09-146)
- C. Authorize a Supplemental Task Authorization with McMahon & Associates in the amount of \$117,085 for assistance in the US 41/Bonita Beach Road Quadrant Plan Northwest Phase I (Green Sheet No. 22-09-148)
- D. Adopt Resolution accepting the resignation of Jeff Lewin from the City of Bonita Springs Local Planning Agency. (Green Sheet No. 22-09-149)
- E. Approve Thirteenth Addendum to Second Agreement for Law Enforcement Services (Green Sheet No. 22-09-151)
- F. Approve the draft July 20, 2022 City Council Budget Meeting Minutes
- G. Approve the draft August 3, 2022 City Council Meeting Minutes
 - Opportunity for City Council Comments on Consent Agenda

10. Mayor and Council Member Items:

- A. Discussion regarding the Lee County Metropolitan Planning Organization's Rail Trail Feasibility Study. (Green Sheet No. 22-09-145)

11. First Reading of an Ordinance:

- A. First reading of the following Ordinance: AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING THE BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 3-DEVELOPMENT STANDARDS, SECTION 3-263 - BIKEWAYS FACILITIES AND PEDESTRIAN FACILITIES, DIVISION 6-OPEN SPACE, BUFFERING, AND LANDSCAPING, AND SEC. 3-535 - PIPING MATERIALS FOR USE IN RIGHT-OF-WAY; AND CHAPTER 4- ZONING, DIVISION 18- HOME OCCUPATIONS AND DIVISION 37 – SUBORDINATE AND TEMPORARY USES, SUBDIVISION III. - MOBILE FOOD VENDORS, PROVIDING CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND AN EFFECTIVE DATE. (Green Sheet No. 22-09-147)

12. City Attorney's Items:

13. City Manager's Items:

A. Review draft Scope of Services for Lobbying Services RFQ and provide direction to staff. (Green Sheet No. 22-09-150)

B. Discussion on the current FY2022-2023 draft budget. (Green Sheet No. 22-09-152)

14. Mayor and Council Member Reports

15. Public Comment

16. Adjournment

REQUESTED MOTION: Update on status of Imperial Crossing draft lease agreement with Barron Collier.

REQUESTOR: Arleen M. Hunter, City Manager; Derek Rooney, City Attorney

AGENDA: Presentations

STRATEGIC PRIORITY: #8 Economic Development

BACKGROUND:

On May 28, 2021, Barron Collier Companies submitted an unsolicited letter of interest to enter into an agreement to design and construct public recreational and civic facilities under a long-term land lease in a public-private partnership with the City on the Imperial Crossing (Bamboo) parcel in Downtown Bonita.

On November 3, 2021, the City entered into an interim agreement with Barron Collier which provided for a due diligence period and the development of a comprehensive final agreement detailing the specifics of the public amenities and terms of the lease.

On August 3, 2022, the City conducted a first reading of an ordinance authorizing the contemplated lease, as required by Section 27 of the City Charter. Pursuant to Council's direction, staff has engaged CBRE to provide an independent analysis of the lease terms provided by Barron Collier and to assist the City in the development of final lease terms. Staff has also sought input from the City's financial advisors, Ashley Brown & Smith CPAs, as to the applicability of any new financial reporting requirements.

Barron Collier will be present to provide an update on the status of the project and the proposed draft lease agreement.

STAFF RECOMMENDATION: Receive update.

ATTACHMENTS:

1. Draft Lease Agreement

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

GROUND LEASE AGREEMENT

(Downtown Bonita Project – Bonita Springs, Florida)

THIS GROUND LEASE AGREEMENT (this “Lease”) is made and entered into by and between the City of Bonita Springs, a political subdivision of the State of Florida (“Landlord”), Downtown Bonita LLC, a _____ limited liability company (“Tenant”).

WITNESSETH:

WHEREAS, Landlord is the owner of the real property described in Exhibit A, attached hereto (the “Project Parcel”), which Project Parcel is bisected by the Imperial River and is located in downtown Bonita Springs, Florida; and

WHEREAS, subject to the terms and conditions hereof, Landlord and Tenant have agreed upon certain planned improvements to be to the Project Parcel, as generally depicted on the conceptual site plan attached hereto as Exhibit “B” (the “Conceptual Site Plan”); and

WHEREAS, Landlord desires to lease to Tenant: (a) the portion of the Project Parcel described or otherwise depicted in Exhibit C, attached hereto as the “premises” (the “Premises” or “Land”), and

WHEREAS, Landlord will retain the portion of the Project Parcel described or otherwise depicted in Exhibit “C”, attached hereto as the “public lands” (the “Public Use Lands”); and

WHEREAS, Landlord and Tenant desire to enter into this Lease for the purpose of establishing their respective rights and obligations under which Tenant may design, develop, construct and operate a mixed-use project on the Premises consisting of residential multi-family buildings as well as commercial buildings, and related amenities (including parking lots to serve such buildings); and

WHEREAS, subject to the terms and conditions hereof, Tenant will also cause certain improvements to be made to the Public Use Lands for the purpose of converting such lands into public city parks located on the north and south banks of the Imperial River, as more particularly described herein.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree as follows:

ARTICLE I

CERTAIN DEFINED TERMS

Section 1.1. Certain Definitions. In addition to other terms defined in this Lease, for all purposes of this Lease:

(a) “Additional Rent” means any and all amounts other than, Base Rent, Percentage Rent, payable by Tenant to Landlord or to any other Person as required under this Lease including, without limitation, the Impositions.

(b) “Affiliate” means any Person that, directly or indirectly, owns or Controls, is owned or Controlled by, or is under common ownership or Control with the Person in question. As used in the preceding sentence, a Person shall be deemed to own another Person if it holds legal

or equitable title to fifty percent (50%) or more of the common stock, partnership interests, limited partnership interests, membership interests or other ownership interests of such other Person.

(c) “**Association**” or “**Maintenance Association**” shall be as defined in the REA.

(d) “**Base Rent**” shall be as defined in Section 4.1, below.

(e) “**Calendar Year**” shall mean and refer to the period of time commencing on January 1st and ending on December 31st of such year.

(f) “**City Parking Spaces**” are defined in Section 6.3, below.

(g) “**Conceptual Site Plan**” shall be as defined in the “whereas” clauses, above.

(h) “**Control**” (including the correlates of “Controlled” and “Controlling”) means, with respect to any Person, (i) ownership directly or indirectly of fifty-one percent (51%) or more of all equity interests in such Person, (ii) the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests, by contract or otherwise, or (iii) the power (exercised directly or through one or more subsidiaries) with respect to the Premises, to make all material property related management decisions in the ordinary course of business (subject to such authority as has been delegated to a property manager under a management agreement meeting the requirements of applicable loan documents) and to veto all other decisions.

(i) “**County**” means Lee County, Florida.

(j) “**Debtor Relief Laws**” means the Bankruptcy Code of the United States, as amended, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Debtor Relief Laws from time to time in effect affecting the rights of creditors generally.

(k) “**Default Rate**” shall mean the prime lending rate as published in *The Wall Street Journal*, from time to time, plus four percent (4%) with such rate changing with each change in the prime lending rate published by *The Wall Street Journal*.

(l) “**Delivery Date**” shall mean and refer to the date that Tenant notifies Landlord, in writing, that Tenant has obtained all Entitlements required (or desired) by Tenant for the development and improvement of the Premises and Public Use Lands in accordance with the terms of this Lease, and that Tenant is ready to accept delivery and possession of the Premises from Landlord.

(m) “**Due Diligence Period**” means the period of sixty (60) days commencing on the Effective Date.

(n) “**Effective Date**” shall mean and refer to the date that the LAST of the following occurs (1) this Lease has been approved by the City Council of the Landlord, (2) this Lease has been executed by Landlord, and (3) this Lease has been executed by Tenant. Upon the request of

Landlord or Tenant, the parties hereto shall execute a supplement to this Lease for the purpose of confirming the Effective Date.

(o) **“Entitlement Period”** shall mean and refer to the period of time commencing upon the expiration of the Due Diligence Period and ending on the Outside Entitlement Date (as defined in Section 3.2, below).

(p) **“Force Majeure Event”** means any one or more of the following that delays or prevents a party from performing an obligation under this Lease: (a) a natural catastrophe such as a flood, an earthquake, a tidal wave, a volcanic eruption, a tornado, (b) acts of war, terrorism, (c) labor strikes or lockouts, (d) civil commotions, (e) any moratorium on the issuance by any applicable governmental authority of any licenses, permits or other governmental approvals required by Landlord or Tenant to perform Landlord’s Work or Tenant’s Work; (f) documented supply chain disruptions and delays beyond the reasonable control and foreseeability of the performing party; and (g) any public health crisis including, but not limited to, pandemics (including without limitation, Covid-19) and epidemics where Tenant or Landlord is not permitted (or is materially impacted) by applicable Laws to perform its work or perform its obligations under this Lease. For the avoidance of doubt, a financial inability to perform is not a Force Majeure Event. Except for the payment of sums of money due from one party to the other, if either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of a Force Majeure Event (a **“Force Majeure Delay”**), the performance of such act shall be excused for the period of the Force Majeure Delay and the period for the performance of such act shall be extended for a period equal to the period of such Force Majeure Delay; provided, however, the party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance. Notwithstanding the foregoing, (y) if any act required for the completion of Tenant’s Work (including without limitation, performance of Tenant’s Work and obtaining permits and government approvals for the same) is delayed due to a Force Majeure Event, such act shall not be excused for any period of the delay that would have likely been reduced had the party claiming the Force Majeure Event been diligently pursuing such act prior to the Force Majeure Event; and (z) if Landlord or Tenant fails to notify the other of the occurrence of a Force Majeure Event that would entitle it to relief of some nature under this Lease within sixty (60) days after Landlord or Tenant, as applicable, has actual knowledge of the occurrence of such Force Majeure Event, then Landlord or Tenant, as applicable, shall only be entitled to claim the benefit of such Force Majeure Event with respect to any days of Force Majeure Delay that occur after Landlord or Tenant, as applicable, notifies the other of the occurrence of such Force Majeure Event. Any party claiming Force Majeure Delay shall as soon as reasonably determinable, to the extent the end date of the Force Majeure Delay is undetermined at the time notice is given, provide an additional notice to Landlord or Tenant, as applicable, of the date that the Force Majeure Delay has ended or is anticipated to end.

(q) **“Governmental Authority”** means the Landlord, the County and any other state, city, district or municipal governmental agency having authority over the development and construction of the Project Improvements.

(r) **“Gross Revenue”** all revenues, income, rents, occupancy fees, issues, profits, termination or surrender fees, penalties and other amounts paid to Tenant (or paid to a third party for the benefit of Tenant) arising from the use or enjoyment of all or any portion of the Premises, including, without limitation, the rental or surrender of any office space, retail space, parking space, indoor or outdoor venues, the rental or licensing of signs, sign space or advertising space, and other receivables relating to or arising from rentals, rent equivalent income, income and profits from residential apartments. **However, for the avoidance of doubt, “Gross Revenue” shall not**

include (a) loan proceeds received by Tenant and pertaining to any loans obtained by Tenant and secured by Tenant's leasehold interest in the Premises, (b) proceeds received by Tenant and arising out of the sale of the Tenant's leasehold interest in the Premises, (c) payments made to Tenant from any sub-tenant of the commercial components of the Project to the extent that such payments are for reimbursement of "pass-thru" expenses such as utilities, taxes, insurance, Association assessments, and/or other maintenance costs typically paid for by commercial tenants under "triple-net" commercial leases (collectively, "Pass Through Expenses"), (d) security deposits collected and held by Tenant (unless and until applied to rent due to Tenant from the applicable sub-tenant of Tenant, (e) any and all insurance proceeds received by Tenant, (f) monies collected by Tenant from any sub-tenant of Tenant or from any other third party and pertaining to a reimbursement to Tenant of costs and damages incurred by Tenant and pertaining to property damage, general liability, or other damages or liabilities incurred by Tenant and reimbursable (under applicable law) to Tenant by the applicable sub-tenant or other third party, and (d) any revenue, income or other amounts received by sub-tenants or sub-licensees of Landlord and not payable to Landlord under the respective sub-lease or sub-license agreement [for example, if a sub-tenant of a commercial building in the Premises has gross revenue (from such sub-tenant's business operations at such building) of \$500,000 in a Calendar Year, but such sub-tenant only pays Tenant \$100,000 in 'base rent' per year (plus Pass Through Expenses), then only the \$100,000 in base rent paid by such sub-tenant to Tenant for such Calendar Year shall be included in Tenant's Gross Revenue for such Calendar Year].

(s) **"Improvements"** means all of the buildings, structures, fixtures and other improvements constructed or placed upon the Land after the Effective Date and during the Term including, without limitation, the Project Improvements.

(t) **"Landlord Delay"** shall mean: (i) a failure by Landlord to meet a deadline set forth in this Lease (other than by reason of a Tenant Delay, casualty or a Force Majeure Event), in which case the days of Landlord Delay shall be the number of days from such deadline to the date Landlord completes the action to which the deadline applies, (ii) any delay in the performance of Tenant's Work caused by Landlord or other party acting for or on behalf of Landlord, or (iii) any delay caused by Concealed or Unknown Conditions, in which case the days of Landlord Delay shall be the number of days of delay in the performance of Tenant's Work reduced by the number of days that Tenant fails to notify Landlord of such Landlord Delay in excess of ten (10) days after Tenant has actual knowledge of such Landlord Delay; and results in (i) Tenant's Work being delayed or (ii) Tenant incurring additional third party expenses (such as, for example, paying overtime) in order to mitigate delays in the completion of Tenant's Work.

(u)

(v) **"Laws"** means any federal, state or local constitution, statute, code, ordinance, regulation, judicial or administrative decision or other rule of law.

(w) **"Legal Requirement"** or **"Legal Requirements"** means, as the case may be, any one or more of all present and future Laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord or the "Premises" (as hereinafter defined)), as the same may be amended from time to time, even if compliance therewith (i) necessitates structural changes or improvements (including changes required to comply with the **"Americans with Disabilities Act"**) or results in interference with the use or enjoyment of the

Premises or (ii) requires Tenant to carry insurance other than as required by the provisions of this Lease.

(x) “**Mortgagee**” means the holder or holders from time to time of a promissory note or notes executed by Tenant evidencing a loan payable to the order of a Person and secured by a deed of trust or mortgage and security agreement upon the leasehold estate of Tenant created hereby.

(y) “**North City Park Parcel**” shall mean and refer to the portion of the Public Use Lands located on the north side of the Imperial River.

(z) “**Park Improvements**” shall mean and refer to the improvements that Tenant will make (or cause to be made) to the North City Park Parcel and South City Park Parcel, as generally described herein and in the Renderings, subject to the terms and conditions hereof.

(aa) “**Park Improvement Costs**” shall mean and refer to the costs and expenses incurred by or on behalf of the Tenant in designing and constructing the Park Improvements and City Parking Spaces.

(bb) “**Park Maintenance Costs**” shall mean and refer to all costs and expenses incurred by the Association during the Term of this Lease in maintaining, repairing and/or replacing the North City Park Parcel, South City Park Parcel, any Park Improvements located thereon, and any additional improvements that may be constructed thereon from time to time by the Landlord, in accordance with this Lease. In addition, although located within the South Premises Land, the costs and expenses of maintaining, repairing and replacing the City Parking Spaces shall also be included in Park Maintenance Costs. However, for the avoidance of doubt, “Park Maintenance Costs” shall NOT include the costs incurred by the Tenant in the initial design and initial construction of the Park Improvements and City Parking Spaces.

(cc) “**Park Parcels**” shall mean and refer to the North City Park Parcel and South City Park Parcel. The Park Parcels comprise the entirety of the Public Use Lands.

(dd) “**Passive Use**” shall mean and refer to sitting, walking, hiking, wildlife viewing, photography, picnicking and/or bicycling.

(ee) “**Percentage Rent**” shall be determined in accordance with Section 4. ___ below.

(ff) “**Permitted Encumbrances**” means Impositions, Legal Requirements, those certain covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of title that affect the Premises as of the date of this Lease as set forth on Exhibit G.

(gg) “**Person**” means any person, corporation, limited liability company, partnership (general or limited), joint venture, association, trust, governmental entity or other business entity or organization.

(hh)

(ii) “**Plans**” shall have the meaning given to such term in Section 5.1 of this Lease.

(jj) **“Premises”** shall mean and refer to the Land and the Project Improvements, together with all rights, privileges, easements, and appurtenances pertaining thereto or referenced in this Lease including, without limitation, Tenant’s easement rights under the REA. For the avoidance of doubt, the “Premises” does NOT include the Public Use Lands.

(kk) **“Preliminary Parking Plan”** shall mean and refer to the conceptual parking plan attached hereto as Exhibit D, which depicts the general proposed location and configuration of certain parking spaces and parking lot improvements to be made to the Land and the Public Use Lands.

(ll) **“Project”** means the design and construction of a mixed-use project on the Premises consisting of residential apartment buildings and related amenities as well as commercial buildings, and any additional ancillary buildings built from time-to-time in connection therewith.

(mm) **“Project Improvements”** means the building, structures, fixtures, , parking areas, and other improvements as set forth in the Plans, which may be constructed from time to time on the Land by Tenant, including, without limitation, residential apartment buildings containing up to one hundred twenty (120) units plus commercial buildings that will contain up to ten thousand (10,000) square feet of restaurant, retail and/or support space.

(nn) **“Public Use Lands”** shall be as defined in the “whereas” clauses, above.

(oo) **“REA”** shall be as defined in Section 8.1, below.

(pp) **“Renderings”** shall mean and refer to the conceptual renderings for the Project Improvements and Park Improvements, as reflected on Exhibit E, attached hereto, which are hereby approved by Landlord.

(qq) **“Rent”** means Base Rent, Percentage Rent and Additional Rent.

(rr) **“Rent Commencement Date”** shall mean and refer to the date that a final certificate of occupancy or its equivalent is issued for any portion of the Project Improvements. Upon the request of either party, Landlord and Tenant shall confirm to the other, in writing, the specific Rent Commencement Date.

(ss) **“Rent Credit Cap”** shall mean an amount equal to One Million Nine Hundred Thousand Dollars (\$1,900,000.00), plus the cost of any Change Orders entered into under section 5.3(g), below.

(tt) **“South City Park Parcel”** shall mean and refer to the portion of the Public Use Lands located on the south side of the Imperial River.

(uu) **“Tenant’s Work”** shall mean and refer to the design and construction of the Project Improvements and Park Improvements.

(vv) **“Transfer”** shall mean (i) the transfer, sale or assignment of Tenant’s interest in the Lease and/or the Premises; (b) the sale, assignment, or transfer in one or more transactions of

more than fifty percent (50%) of the membership interest in Tenant, which is intended to transfer more than fifty percent (50%) of the beneficial interest of Tenant in the Lease; and (iii) a sublease of the Premises or substantially all of the Premises to a single party or affiliated parties for all or substantially all of the remaining Term of the Lease.

ARTICLE II

GRANT AND TERM OF LEASE

Section 2.1. Leasing Clause. Subject to the terms and conditions contained in this Lease, Landlord hereby leases, demises and lets to Tenant and Tenant hereby takes and leases from Landlord the Premises.

Section 2.2. Term of Lease. Subject to the provisions hereof, Tenant shall have and hold the Premises for a Term (herein so called) commencing on the Effective Date and ending on the ninety-ninety (99th) anniversary of the Effective Date (the “**Expiration Date**”), unless earlier terminated as provided herein.

ARTICLE III

DUE DILIGENCE/ENTITLEMENT PERIOD/PERMITTING

Section 3.1 Due Diligence.

(a) Landlord hereby agrees, within five (5) days after the Effective Date, to deliver (via an online drop-box) to Tenant all topographical, engineering, environmental and other studies, surveys, engineering plans, development agreements, licenses, permits, plans, existing title commitments and other like materials with regard to the Premises, in Landlord’s possession or control (however, Landlord shall not be required to provide Tenant with any financial pro formas of Landlord).

(5) During the Due Diligence Period, Tenant may make such surveys, inspections and tests of and/or concerning the Premises as Tenant may reasonably desire, with such activities being conducted by Tenant, at Tenant’s sole cost and expense. Because Tenant is not entitled to possession of the Premises until the Delivery Date, Tenant agrees that Tenant shall notify Landlord no less than twenty-four (24) hours in advance (which notice may be telephonic or by email) of any on-site tests or inspections so that Landlord can authorize Tenant’s inspectors, as agents of Landlord, to access the Premises for such on-site tests and inspections, including, without limitation, having borings, hydrologic, environmental, soils and other pre-development studies, analyses and/or tests undertaken by Tenant’s agents, employees and/or contractors (collectively, the “**Inspections**”). All persons accessing the Premises to conduct tests and inspections shall be required to provide evidence of comprehensive liability insurance in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, together with property damage of not less than \$1,000,000 and shall deliver a certificate of such insurance coverage to Landlord. All Inspections shall be performed at Tenant’s expense but without liability for payment of Rent or of any other charges required to be paid by Tenant hereunder, but otherwise subject to the terms and conditions of this Lease. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liabilities, obligations, claims, demands, losses, damages, actions or causes of action, reasonable out-of-pocket costs and expenses (including, without limitation, reasonable

out-of-pocket attorneys' fees and litigation costs) imposed upon or incurred by or asserted against Landlord by reason of, or directly related to, the Inspections, but such indemnification shall not apply to any liability related to the negligence of Landlord, nor to any liability that may arise from Tenant discovering and/or reporting any conditions affecting the Premises (including, without limitation, the presence of hazardous materials or substances or any other environmental contamination). Tenant's indemnity obligation in this Section shall survive any termination of this Lease. Tenant may cancel this Lease at any time during the Due Diligence Period by providing written notice to Landlord prior to the expiration of the Due Diligence Period.

Section 3.2 Tenant's Entitlement Period. Tenant's obligations hereunder are conditioned upon receipt by Tenant of certain entitlements for the development, construction and operation of the Project and Project Improvements on the Premises (as well as the Park Improvements for the North City Park Parcel and South City Park Parcel), which entitlements (the "Entitlements") shall, for purposes of this Lease, mean and refer to the following (in each instance, with all appeal periods having expired):

- (a) site development plan approval ("special assemblage") by Landlord;
- (b) issuance of an environmental resource permit by the South Florida Water Management District;
- (c) any other approvals required to be obtained from Landlord (or desired by Tenant from Landlord) for the Project and Project Improvements;
- (d) the vacation (or relocation, as determined by Tenant) of any public or private utility easements encumbering the Premises and/or Park Parcels as of the Effective Date, to the extent such vacation or relocation is deemed necessary or advisable by Tenant (in its sole discretion) for the construction of the Project Improvements and/or Park Improvements; and
- (e) issuance of any other state or federal permits required by Tenant.

Tenant will work diligently and use commercially reasonable efforts to obtain the Entitlements during the Entitlement Period. The terms and conditions of all Entitlements must be acceptable to Tenant, in Tenant's reasonable discretion. Landlord shall cooperate with Tenant and if requested or required by any governmental agency, Landlord shall execute any consents or other forms required (or requested) by such agency to confirm Tenant's right to apply for and obtain the Entitlements. **In addition, with respect to the Entitlements that Tenant desires to obtain from the Landlord, the Landlord agrees that all of such Entitlements shall be granted "fast-track" status by the Landlord and Landlord shall instruct its staff and outside consultants accordingly.**

Landlord and Tenant agree that if, for any reason, Tenant has not obtained the Entitlements (permitting Tenant's Permitted Use of the Premises and construction of the Project Improvements in accordance with plans and specifications mutually acceptable to Landlord and Tenant) by no later than May 1, 2025 (the "Outside Entitlement Date") then Tenant shall have the right to terminate this Lease, without penalty, by furnishing written notice thereof to Landlord by no later than ninety (90) days after the Outside Entitlement Date (the "Entitlement Termination Deadline"). Additionally, if at any time Tenant determines, in Tenant's sole discretion, that Tenant will be unable to secure the necessary Entitlements (permitting Tenant's Permitted Use of the Premises and construction of the Project Improvements in accordance with plans and specifications mutually acceptable to Landlord and Tenant), then Tenant shall have the right to terminate this Lease, without penalty, by providing Tenant with not less than five (5) days prior written notice thereof. If Tenant terminates this Lease pursuant to this Section 3.2, and such termination is due (in whole or in part) to Landlord failing or

refusing to approve any Entitlement that Landlord has the authority to approve, then by no later than thirty (30) days after Tenant terminates this Lease, Landlord shall reimburse Tenant an amount equal to two (2) times the total costs and expenses incurred by Tenant in negotiating this Lease, conducting Tenant's inspections and evaluations of the Premises, and applying for and pursuing the Entitlements (collectively, the "**Pursuit Costs**") and the foregoing obligation shall survive the termination of this Lease. Tenant shall provide Landlord with commercially reasonable documentation evidencing such Pursuit Costs.

Section 3.4 Delivery of Possession to Tenant: Landlord shall deliver possession of the Premises to Tenant on the Delivery Date (as defined, above).

ARTICLE IV

PERCENTAGE RENT

Section 4.1. Free Rent Period; Base Rent.

(a) From the Effective Date and running through the day prior to the Rent Commencement Date, Tenant shall occupy the Premises rent free, including Base Rent, Percentage Rent and Additional Rent but otherwise subject to all of the terms and conditions of this Lease. During such free rent period, Landlord shall be responsible for paying all Impositions and fees and/or charges coming due, if any.

(b) Commencing upon the Rent Commencement Date, Tenant agrees to pay Landlord, without prior demand therefor, and without set-off or deduction, a base minimum rent (the "**Base Rent**"), in advance, in the following amounts:

- 1) Commencing on the Rent Commencement Date and continuing through the last day of the first full Calendar Year after the Rent Commencement Date, the annual Base Rent shall be Ninety Nine Thousand Dollars (\$99,000.00), payable in advance in equal monthly installments. If the Rent Commencement Date is not the first day of a Calendar Year, then the annual Base Rent for the period of time commencing on the Rent Commencement Date and ending at the end of such partial Calendar Year shall be pro-rated.
- 2) Commencing with the second full Calendar Year after the Rent Commencement Date and continuing thereafter for the remainder of the Term, the Base Rent for each Calendar Year shall be an amount equal to the GREATER of:
 - a. two percent (2%) of the Tenant's actual Gross Revenue for the immediately preceding Calendar Year, payable in advance in equal monthly installments;
 - OR
 - b. the Base Rent of the immediately preceding Calendar Year.
- 3) In recognition of the fact that Tenant's actual Gross Revenue for a Calendar Year just-ending may necessarily be subject to final adjustment, review and/or audit after such Calendar Year has ended, Tenant shall have the right to reasonably estimate Tenant's actual Gross Revenue for a Calendar Year during the month of December of such

Calendar Year (Tenant's "Initial Estimate") and calculate Base Rent for the immediately following year based off of Tenant's good faith Initial Estimate. Thereafter, Tenant shall confirm to Landlord Tenant's actual Gross Revenue by no later than May 1st of the following Calendar Year (in each instance, the "Final Calculation"). If the Final Calculation reflects that Tenant's actual Gross Revenue for the prior Calendar Year was LESS than the Initial Estimate, then the Base Rent shall be adjusted accordingly and Tenant shall be entitled to offset any overpayment of Base Rent resulting therefrom against the next payment(s) of Base Rent coming due from Tenant to Landlord hereunder. If the Final Calculation reflects that Tenant's actual Gross Revenue for the prior Calendar Year was MORE than the Initial Estimate, then the Base Rent shall be adjusted accordingly and, Tenant shall deliver a true-up payment to Landlord (consisting of the amount by which Tenant had been underpaying Base Rent for such Calendar Year) with the next monthly installment of Base Rent due and payable hereunder.

Section 4.2 Percentage Rent. Commencing on the Rent Commencement Date and continuing at all times thereafter during the Term of this Lease, Tenant shall pay to the Landlord during each Calendar Year a sum equivalent to the amount by which two and one-half percent (2.5%) of Tenant's Gross Revenue for such Calendar Year exceeds the Base Rent for such Calendar Year (the "**Percentage Rent**"). The Percentage Rent shall be payable quarterly (in arrears, and by no later than twenty (20) days after the end of each calendar quarter (plus sales tax) without any prior demand therefor, and without any set-off or deduction whatsoever.

Section 4.3 Statements of Gross Revenue. Within twenty (20) days after the end of each calendar quarter during the term of this Lease, Tenant shall submit to Landlord an accurate, unaudited, written statement signed by Tenant or on its behalf by a duly authorized officer or representative, showing the full amount of Tenant's Gross Revenue during the previous calendar quarter) Within one-hundred twenty (120) days after the end of each Calendar Year, Tenant shall submit to Landlord a statement signed by and officer of Tenant, showing accurately and in reasonable detail the full amount of Tenant's Gross Revenue during the immediately preceding calendar year and the total Percentage Rent that should have been paid for such calendar year (the "Annual Reconciliation"). If the Annual Reconciliation reflects that Tenant overpaid the Percentage Rent actually due for such calendar year, then Tenant may deduct the amount of such overpayment from future quarterly payments of Percentage Rent. If the Annual reconciliation reflects that Tenant underpaid the Percentage Rent for such calendar year, then Tenant shall remit the addition Percentage Rent due for such calendar year to Landlord concurrently with the delivery of such Annual Reconciliation to Landlord.

Section 4.4 Books of Account and Audits. Tenant shall, at all times during the term of this Lease, keep at the Premises or at the general office of the Tenant, full, complete and accurate books of account and records in accordance with accepted accounting practices with respect to all operations of the Tenant's business to be conducted in, upon or from the Premises, . Tenant shall retain such books and records, and other documents and papers in any way relating to the operation of such business, for at least two (2) years from the end of the Calendar Year to which they are applicable, or, if an audit is required or a controversy should arise between the parties hereto regarding the rent payable hereunder, until such audit or controversy is terminated. Such books and records shall at all reasonable times during the retention period referred to above be open to the inspection of Landlord or its duly authorized representative, who shall have full and free access to the same, shall have the right to make photo or electronic copies of the same, and the right to require of Tenant, its agents and employees, such information or explanation with respect to the same as may be necessary for a proper examination thereof. If it is determined that the actual Gross Revenue for any period covered by any statement required pursuant to Subparagraph 4.3 hereof shall

exceed the amount thereof shown in said statement by five percent (5%) or more, Tenant shall pay the expenses (not to exceed \$5,000 per audit) incurred in determining the actual Gross Revenue for such period.

Section 4.5 Relationship of Parties. Anything to the contrary notwithstanding, the Landlord shall in no event be deemed to be a partner or engaged in a joint venture with, or an associate of, Tenant in the conduct of its business. Nothing in this Lease shall be deemed or construed to confer upon Landlord any interest in the business of the Tenant. The relationship of the parties during the term of this Lease shall at all times be that of Landlord and Tenant.

Section 4.6. Additional Rent. Tenant hereby agrees to pay all Additional Rent to Landlord, together with applicable sales tax thereon, or to such other Person as Landlord may direct or as is required under this Lease at such time as such Additional Rent is due and payable as required under this Lease.

Section 4.7. Late Charge. If any installment of Base Rent or Percentage Rent is not paid within five (5) business days after the same is due, then with respect to the 2nd and any subsequent late payment during any Calendar Year, Tenant shall pay to Landlord on demand, as Additional Rent, a late charge equal to two percent (2%) on such overdue installment of Base Rent or Percentage Rent.

Section 4.8 Sales Tax. Tenant shall be responsible for paying all applicable sales tax that may be levied from time to time on any amounts due and payable by Tenant hereunder, and shall remit such sales tax to Landlord concurrently with Tenant's payments of Rent and Additional Rent hereunder.

ARTICLE V

APPROVALS; PLANS, IMPROVEMENTS; ALTERATIONS;

PARK IMPROVEMENTS; PARK ALTERATIONS

Section 5.1. Approval of Plans and Specifications. Provided that Tenant does not elect to terminate this Lease pursuant to the express terms of this Lease, Tenant will, at its sole expense, cause its architect ("**Tenant's Architect**") to complete exterior elevations and a detailed site plan for the Project Improvements and Park Improvements (collectively, the "**Plans**"). Tenant shall submit the same to Landlord for review and consideration and Landlord will have twenty (20) days to approve or disapprove the Plans, and the Landlord shall be required to approve such Plans so long as they are substantially consistent with the Conceptual Site Plan and Renderings. In addition, if Tenant makes any changes to the Plans due to requests (or requirements) of any governmental agency, then Landlord shall be required to approve the Plans in spite of such changes. Failure by Landlord to approve or disapprove the Plans within such twenty (20) day period will constitute an approval by Landlord. In the event Landlord disapproves of the Plans within such twenty (20) day period, Landlord will advise Tenant of Landlord's objections to the Plans (and will specify, in writing, the reasons for Landlord's disapproval) and Tenant will incorporate Landlord's objections and comments into the Plans within thirty (30) days of receipt thereof and resubmit the same to Landlord. Any comments which Landlord requests to be incorporated into the Plans shall be reasonable. Notwithstanding the foregoing, the changes requested by Landlord shall not materially increase the cost of construction of the Project nor the Park Improvements. In the event Tenant desires or is required by the County or other Governmental Authority to materially modify the Plans, Tenant shall submit such modifications to Landlord for review and consideration following the same procedure as set forth above for the initial approval of the Plans.

Section 5.2 Adjustment of Premises & Park Boundaries. It is acknowledged that the common boundary line between the Land and the North City Park Parcel and South City Park Parcel has been based initially upon the Conceptual Site Plan and Renderings, and that adjustments in the exact location of such boundary line may be reasonably required in conjunction with Tenant's design of the Plans and obtaining of the Entitlements. Landlord and Tenant will work in good faith during the design and Entitlement Process, and upon final approval of the Plans by Landlord and Tenant, Landlord and Tenant will prepare and execute an amendment to this Lease for the purpose of making any adjustments to the Land and its common boundary with the North Park Parcel and/or South Park Parcel so that (a) the Land physically includes (and only includes) Tenant's entire Project, as reflected in such final Plans, and (b) the Land physically include (and only includes) the Park Improvements and the City Parking Spaces.

Section 5.3. Construction of Project Improvements and Park Improvements; Rent Credit.

(a) Provided that this Lease is not terminated by Tenant pursuant to the express terms of this Lease, Tenant covenants and agrees, at its sole expense, to construct with all due diligence the Project Improvements and Park Improvements in a good and workmanlike manner and substantially in accordance with the final Plans approved by Tenant and Landlord and any other applicable governmental authorities. In addition to the other insurance requirements set forth in this Lease, from the commencement of construction until completion of the Project Improvements and Park Improvements, Tenant shall maintain or cause its contractors to maintain, general liability and other types of insurance insuring Landlord and Tenant against all hazards normally insured against in the construction of projects similar to the Project Improvements and Park Improvements.

(b) Tenant shall use commercially reasonable efforts to commence construction of the Project Improvements or Park Improvements no later than two-hundred seventy (270) days after the expiration of the Entitlement Period and Landlord's approval of the Plans (the "Commencement Deadline"). Construction shall be deemed to have commenced upon the installation of the silt-fence at the Premises and/or Public Use Lands. The Commencement Deadline shall be extended on a day-for-day basis by any delay due to a Force Majeure Event or a Landlord Delay. Tenant shall endeavor in good faith to substantially complete the construction of the Park Improvements by no later than one-hundred eighty (180) days after the issuance of a certificate of occupancy for the first residential building constructed on the Premises, subject to a Force Majeure Event or a Landlord Delay.

(c) Landlord shall cooperate with Tenant and upon request of Tenant shall grant Tenant and Tenant's contractors and sub-contractors with temporary licenses to access the Public Use Lands for the purpose of constructing the Project Improvements and the Park Improvements. Upon reasonable request, Landlord shall also grant to Tenant and Tenant's contractors temporary licenses for construction staging within the Public Use Lands.

(d) Landlord agrees that Tenant shall receive the benefit of any applicable impact fee credits that may be available with respect to the Land and arising out of any past improvements and uses of the Land occurring not more than fifty (50) years prior to the Effective Date.

(e) Landlord agrees that Tenant shall be entitled to a credit against all Rent otherwise due hereunder, in the amount of the Park Improvement Costs, but such credit shall not exceed the Rent Credit Cap even if the actual Park Improvement Costs incurred by Landlord exceed the Rent Credit Cap. Upon completion of the Park Improvements, Tenant shall provide Landlord with commercially reasonable evidence of the total Park Improvement Costs incurred by Tenant.

Tenant shall have the right to off-set all Rent payments otherwise due from Tenant to Landlord hereunder until the Tenant has received the full benefit of the credit granted by this sub-section.

(f) Upon the reasonable request of Tenant, Landlord shall cooperate in good faith and shall grant perpetual utility easements to any public or private utility provider that requests (or requires) one or more easements over the Land (and/or Public Use Lands) for the purposes of facilitating the delivery of utility services to the Premises.

(g) Landlord shall have the right to request minor changes to the Tenant's final Plans pertaining to the Park Improvements; provided, however, that any such changes shall be requested in writing, shall be generally consistent with the nature and scope of the work and shall comply with applicable governmental requirements. It shall be reasonable for Tenant to require Landlord to pay for any reasonable net cost increases as a result of the Change Order, and to reject any Change Order that will cause an unreasonable delay unless reasonable accommodations are otherwise provided. Any such changes that are authorized as provided in the previous sentence are referred to herein as "**Change Orders.**" All fees and expenses of Tenant's architect in preparing any Change Orders requested by Landlord shall be paid by Landlord.

Section 5.4. Landlord Duty to Cooperate. Landlord shall cooperate with Tenant in the performance of Tenant's construction of the Tenant's Work and shall not take any action or impose any rules or regulations that interfere with the efficient and expeditious conduct of Tenant's Work. Tenant shall have no obligation to abide by any rules or regulations imposed by Landlord that interfere with the efficient and expeditious conduct of Tenant's Work. Without limiting the foregoing, Landlord shall promptly sign and execute such documents or otherwise evidence its approval, consent or grant of authority, as required by any public authorities having jurisdiction thereover, to facilitate issuance to Tenant of necessary licenses or permits to make or perform Tenant's Work or promptly respond to Tenant that it cannot sign such documents or approve such documents and state the reason why. In the event Landlord fails to so sign and execute such documents or otherwise evidence its approval, consent or grant of authority or to provide reasonable grounds for refusing to do so, within five (5) business days following Landlord's receipt thereof from Tenant, then each day following the sending of a second (2nd) copy of the notice stating "FAILURE TO RESPOND WITHIN 5 BUSINESS DAYS WILL CONSTITUTE LANDLORD DELAY," shall constitute a Landlord Delay until Landlord signs and executes such documents or otherwise evidences its approval, consent or grant of authority or provides reasonable grounds for refusing to do so.

Section 5.5 Concealed or Unknown Conditions Encountered during Tenant's Work. Should Tenant or its agents or contractors encounter concealed or unknown conditions during the performance of any of Tenant's Work, including conditions below the surface of the ground (including, without limitation, variable fill, asphalt, organic material, abandoned utility lines, buried equipment, garbage or debris, or abandoned underground storage tanks and piping related thereto) (collectively referred to as "Concealed or Unknown Conditions"), Landlord will remove or correct (and to the extent applicable, dispose of in accordance with Environmental Laws) such Concealed or Unknown Conditions, at Landlord's sole cost and expense, and in accordance with Laws. Landlord will perform such removal or correction within fourteen (14) days of receipt of notice from Tenant of the existence of such conditions and Landlord will further, within such period, restore the affected area(s) of the Premises to the condition which such area(s) should have been in, so as to render the area(s) useable for Tenant's Work. Landlord will within ten (10) days provide from a reputable engineer or contractor of an estimate of time to Tenant that it will take to remove and correct the concealed or unknown condition. Tenant may review such estimate with its own consultants. If the Concealed or Unknown Conditions will: (i) Tenant's reasonable estimation take longer than 60 days to remove and correct; or (ii) if such removal and correction takes longer than 120 days, then

in either event Tenant shall have the option to terminate the Lease, by giving written notice to Landlord within 14 days of receiving Landlord's written estimate of the time to remove and correct such condition, the parties shall be released from all obligations under the Lease. This obligation shall survive termination of the Lease.

Section 5.6 Alterations by Tenant; Park Alterations by Landlord. At any time during the Term, Tenant, at its sole expense, may make interior, exterior and structural alterations and additions to any portion of the Improvements, subject to receipt by Tenant of all necessary permits and approvals. All alterations and additions made in accordance with this Section shall be constructed in accordance with all applicable Legal Requirements, shall become part of the Improvements and shall remain the property of Tenant during the Term. Landlord may make, from time-to-time and at Landlord's sole cost and expense, additional improvements to the Park Parcels, subject to the prior written approval of Tenant, which approval shall not be unreasonably withheld so long as the Park Parcels remain improved as 'passive-use' city parks. Under no circumstances shall any stages or band-shells be constructed on the Park Parcels, nor shall any other improvement be constructed on the Park Parcels that would obstruct views from the Premises to the Imperial River or that would otherwise be deemed an 'eye sore' by Tenant (in Tenant's commercially reasonable discretion).

Section 5.7. Zoning and Permits. Subject to Landlord's obligations hereinabove, Tenant, at its sole cost and expense shall be responsible for and shall obtain all governmental permits and approvals necessary or appropriate for the construction of the Project Improvements including, but not limited to, (i) all required building permits and approvals, including the payment by Tenant of all applicable permit and impact fees, and (ii) tap permits or "connections" for water and sanitary sewer services to the Premises. Landlord agrees, upon Tenant's request, to cooperate with Tenant, at no cost to Landlord, and to join in applications for zoning matters, building permits, certificates of occupancy, and all other applications for licenses, permits and approvals for which the signature of Landlord or the owner is required by applicable law.

Section 5.8. Surrender of Improvements. All Improvements shall remain the property of the Tenant until the expiration or termination of this Lease. Upon the expiration or termination of this Lease, the Improvements (with the exception only of movable trade fixtures, furniture, furnishings, or other personal property owned by Tenant) shall be surrendered to and become the absolute property of Landlord.

Section 5.9. Mechanic's and Materialmen's Liens; Waiver of Landlord's Lien Rights.

(a) The interest of Landlord in the Land and Premises is not subject to liens for improvements or alterations made by or at the direction of Tenant. Tenant shall comply with the Mechanic's Lien Law of the State of Florida as set forth in Chapter 713, Florida Statutes. Tenant will not create or permit to be created or to remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Land, any part thereof or upon Tenant's leasehold interest, which arises out of the use or occupancy of the Land by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant. If any such lien is filed against the Land, Tenant shall, within sixty (60) days after notice of the filing thereof cause such lien to be released or discharged with respect to the Land by payment, bonding, or transfer to security pursuant to the Florida Construction Lien Law. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance by any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises, or any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the

Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises. After prior written notice to Landlord, Tenant shall not be required to discharge or remove any lien referred to in this Section 5.7(a) so long as Tenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof or the amount of the damages caused thereby by appropriate proceedings which shall operate during the pendency thereof to prevent (i) the collection of, or other realization upon, the lien so contested, (ii) the sale, forfeiture or loss of any of the Premises, any Base Rent, Percentage Rent or any Additional Rent to satisfy the same, (iii) any interference with the use or occupancy of any of the Premises, and (iv) any interference with the payment of any Base Rent, Percentage Rent or any Additional Rent. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall have the right to attempt to settle or compromise such contest through negotiations. Tenant shall indemnify and hold Landlord harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

(b) Landlord will not create or permit to be created or to remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Land, which arises out of the use or occupancy of the Land by Landlord prior to the date hereof or by any reason of any labor or materials furnished or claimed to have been furnished to Landlord or by reason of the construction, addition, alteration or repair of the improvements on the real property adjoining the Land owned by Landlord. If any such lien is filed against the Land, Landlord shall, within sixty (60) days after notice of the filing thereof, cause such lien to be released or discharged with respect to the Land by payment or bonding. After prior written notice to Tenant, Landlord shall not be required to discharge or remove any lien referred to in this Section 5.7(b) so long as Landlord shall contest, in good faith and at its expense, the existence, the amount or the validity thereof or the amount of the damages caused thereby by appropriate proceedings. Landlord shall indemnify and hold Tenant harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts that shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

(c) Landlord hereby waives its right to assert any lien rights (whether arising under statute or otherwise) against any of the Project Improvements or any personal property owned by Tenant and located from time to time upon the Premises.

ARTICLE VI

USE OF PREMISES; USE OF PARK PARCELS; PARKING

It is recognized that the successful development and enjoyment of the Project by Tenant (and its sub-tenants and guests), and the improvement of the Park Parcels by Tenant and Landlord and subsequent use of the Park Parcels by the public is necessarily dependent on certain agreements and commitments by the Landlord and the Tenant hereinbelow, to ensure that the Project and Park

Parcels will complement each other, both aesthetically and in terms of compatible uses. Therefore, Landlord and Tenant agree that that, in addition to the other terms and conditions of this Lease, the use of the Premises and Park Parcels shall be subject to the following:

Section 6.1. Use of Premises.

(a) Subject to Landlord's receipt of the necessary Entitlements, the Premises shall be used for the development, construction and operation of the Project (the "**Permitted Use**").

(b) Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Premises or any use to be made thereof contrary to applicable Legal Requirements. Tenant shall not use, occupy or permit any of the Premises to be used or occupied, nor do or permit anything to be done in or on any of the Premises, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain then in force with respect to any of the Premises, (ii) affect the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, or (iii) cause any injury or damage to any of the Improvements.

(c) Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Premises by Tenant and any subtenants.

Section 6.2 Use of Park Parcels. The Landlord covenants and agrees that the Park Parcels shall at all times be maintained and used a "passive-activity" in a first-class condition as Passive Use public parks, generally open to and accessible by the public free of charge, with limited 'special events'. Without limiting the generality of the foregoing, the following terms and conditions shall also apply to the Landlord's use and operation of the Park Parcels (and these restrictions shall be included in the REA):

- (a) All sub-tenants, guests and invitees of any portion of the Premises shall have the same rights to access, use and enjoy the Park Parcels as any other member of the public at large.
- (b) The North Park Parcel shall open no earlier than sunrise each day and shall close no later than 30 minutes after sunset each day.
- (c) The South Park Parcel may be open as late as any business that may be open from time to time within the commercial components of the Project.
- (d) No portion of the Park Parcels shall be used as a 'dog park'.
- (e) Fishing in the Imperial River shall be prohibited.
- (f) Swimming in the Imperial River shall be prohibited.
- (g) With the exception of 'farmer's markets' (which may be conducted on a weekly basis), concerts or other 'special events' (on either or both Park Parcels) shall not take place more frequently than once (1) per calendar quarter and Landlord shall be responsible for ensuring that the Park Parcels are cleaned and restored promptly after the occurrence of any special events. For purposes hereof, a 'special event' shall mean and refer to any organized

gathering at either Park Parcel (whether organized by Landlord or by a private-party) for a non-Passive Use event (such as an outdoor play, music festival or art festival).

- (h) The following activities shall be prohibited on the: any motorized activity (including electric motors), sports fields or sport facilities, playgrounds, golf courses, swimming pools, outdoor theatres, gymnasium, meeting space, game rooms, horseback riding, camping, hunting, paintball, skateboarding.

Upon receipt of notice by Landlord that the use of the is not in compliance with the requirements of this Section 6.2 (or the REA), the Landlord shall cease-and desist such action (if such violations are occurring with the permission of Landlord) and shall take prompt and commercially reasonable enforcement action against the offending parties, if such activities are occurring without the permission of Landlord.

Section 6.3. City Parking. The Preliminary Parking Plan depicts certain parking spaces on the South Park Parcel (the “**City Parking Spaces**”). Concurrently with constructing the Project Improvements, Tenant shall design and construct the City Parking Spaces at the Tenant’s expense, and the Landlord shall have the right (at the Landlord’s expense) to place signage in front of each of the City Parking Spaces for the purpose of designating such parking spaces for the use of members of the public that are visiting the Park Parcels. Once constructed by the Tenant, the Association shall thereafter maintain, repair and replace the City Parking Spaces, at the Landlord’s expense, in accordance with the terms of the REA.

Section 6.4 Parking at Premises. For the avoidance of doubt, all parking areas located from time to time within the Premises are exclusive to Tenant and its sub-tenants and sub-licensees and their respective agents, employees, contractors, invitees, and neither Landlord nor any agent, contractor, licensee or invitee of Landlord shall have any right to use such parking areas.

ARTICLE VII

TAXES AND ASSESSMENTS

Section 7.1. Payment of Taxes. Subject to the Excluded Taxes (as defined herein below), from and after the Rent Commencement Date and subject to the provisions of Section 7.3 hereof relating to contests, Tenant shall, at least fifteen (15) days before delinquent or interest or penalties are due thereon, pay and discharge (all of the following being herein collectively called the “**Impositions**”): all taxes of every kind and nature (including real, ad valorem, personal property, franchise, withholding, profits and gross receipts taxes) on or with respect to the Premises; all charges and/or taxes imposed by any governmental body for any easement or agreement maintained solely for the benefit of the Premises; all general and special assessments (payable in installments if permitted), levies, permits, inspection and license fees on or with respect to the Premises; all water and sewer rents and other utility charges on or with respect to the Premises; all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Premises, during the Term, against Landlord, Tenant or any of the Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Premises, or the , Base Rent, Percentage Rent or Additional Rent, including without limitation, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Base Rent, Percentage Rent or Additional Rent; If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition. Nothing herein shall obligate Tenant to pay, and the term “Impositions” shall exclude, federal, state or local (i) documentary stamp transfer taxes due on deeds as the result of a conveyance by (or suffered by) Landlord (other than this Lease), (ii) franchise, capital stock or similar taxes if any, of Landlord, (iii) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its net income, (iv) any estate, inheritance, succession, gift,

capital levy or similar taxes, unless the taxes referred to in clauses (ii) and (iii) above are in lieu of or a substitute for any other tax or assessment upon or with respect to any of the Premises which, if such other tax or assessment were in effect at the commencement of the Term, would be payable by Tenant, or (v) any real estate taxes or special assessments levied on the value of the Land or Tenant's interest in the Land (as opposed to taxes levied on the assessed value of the Project Improvements) (collectively, the "Excluded Taxes"). In the event that any assessment against any of the Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and in such event, Tenant shall be liable only for those installments which become due and payable during the Term.

Section 7.2. Indemnity for Impositions. Tenant will not permit any lien or judgment for Impositions for which Tenant is responsible hereunder to be enforced against the Land or Improvements. Tenant agrees to indemnify and save Landlord harmless from the payment of Impositions for which Tenant is responsible hereunder and any loss, cost, expense (including court costs and reasonable attorneys' fees), or liability ever incurred or suffered by Landlord as a result of Tenant's failure to pay the Impositions or any portion thereof in accordance with the provisions hereof.

Section 7.3. Tenant's Right to Contest. Tenant may in good faith and at its sole cost and expense (in its own name or in the name of Landlord, or both, as Tenant may determine appropriate) contest the validity or amount of (i) the Impositions, and (ii) any other taxes, charges, assessments, or other amounts, charged or assessed against the Premises in which event the payment thereof may be deferred during the pendency of such contest. If requested by Tenant, Landlord will join Tenant as a party to any such contest; provided, that Landlord shall not be obligated to incur any expense in connection therewith. Nothing herein contained, however, shall be construed to authorize Tenant to allow or to permit the Premises, or any part thereof, to be sold by any county, city, state, municipal, or other governmental authority for the non-payment of any Impositions.

ARTICLE VIII

MAINTENANCE ASSOCIATION; MAINTENANCE OF PARK IMPROVEMENTS

Section 8.1. Maintenance Association. The Maintenance Association has been or will be established to be responsible for (a) the day-to-day as well as extraordinary maintenance and repair of the Park Parcels and Park Improvements, and (b) any maintenance and/or repair activities pertaining to the Premises and for which the Tenant may (in its sole discretion) contract for with the Association. The Maintenance Association shall be governed by a board of directors consisting of three (3) members, two of which shall be appointed by the Tenant, and one of which shall be appointed by the City manager (and, for the avoidance of doubt, the City manager may appoint himself/herself). The Members of the Association shall be the Tenant and the Landlord, and the board of directors of the Association may appoint officers to carry out the day-to-day functions of the Association.

Section 8.2 REA. The Landlord, Tenant and Association shall enter into an easement, maintenance and cost sharing agreement (the "REA"), pursuant to which the Association shall be granted access rights to the Public Use Lands for maintenance and repair work, Tenant shall be granted access rights (for itself and its sub-tenants and invitees) to the Public Use Lands (and, as to the South Premises Land, access and utility easements through the City Parking area adjacent to the South Premises Land), and the Association shall agree to undertake maintenance and repair obligations for the (subject to reimbursement from Landlord). The final form of the REA will be agreed upon, signed and recorded by no later than ninety (90) days after the expiration of the Entitlement Period, but shall be consistent with the business terms set forth on Exhibit "F", attached hereto. The Landlord agrees that the final approval and execution of the REA by the Landlord shall be an administrative act and the Landlord's city manager (or such city

manager's designee) is hereby authorized to execute the final REA on behalf of Landlord so long as the REA has been reviewed and approved (as to legal sufficiency) by the Bonita Springs City Attorney.

ARTICLE IX

TITLE AND CONDITION

Section 9.1. Title and Condition.

(a) The Premises are demised and let subject only to (i) the Permitted Encumbrances, (ii) all Legal Requirements, and (iii) the condition of the Premises as of the Effective Date; without representation or warranty by Landlord except as set forth in Section 9.1(b) below.

(b) Landlord represents and warrants to Tenant, with the understanding that Tenant is entering into this Lease in reliance thereon, that:

(i) Landlord has the full power and authority to enter into and perform this Lease according to its terms and the individual executing this Lease on behalf of Landlord is authorized to do so;

(ii) Landlord has not granted to any third party the right to use or occupy any portion of the Premises, and Landlord is not aware of any claim by any third party of the right to do so

(iii) Landlord has not received notice of and has no knowledge of any existing or threatened action, suit or proceeding affecting the Premises (including, without limitation, proposed or threatened condemnation), in any court or before or by any federal, state, county or municipal or other governmental instrumentality;

(iv) All Impositions payable with respect to the Premises which are due and payable or allocable to the period ending as of the Delivery Date, and all prior periods have been (or will be) paid by Landlord (or Landlord's predecessor in title) and Landlord shall be responsible for the timely filing of all returns, reports or other documents required by any taxing authority claiming jurisdiction with respect to any such Impositions;

(v) To Landlord's actual knowledge after due inquiry, and except as disclosed in any environmental reports obtained by Landlord (and delivered to Tenant during the Due Diligence Period) or obtained by Tenant during the Due Diligence Period, the Premises has not been used for the disposal of or to refine, generate, manufacture, produce, store, handle (except in legal quantities used for commercial or retail purposes), treat, transfer, release, process, or transport any Hazardous Materials (as defined below) and no underground storage tanks are located on the Premises;

(vi) there are no leases, rental or other contracts or agreements or encumbrances which are not referenced in Exhibit G and which burden and encumber the Premises;

(vii) The uses and improvements contemplated by the Project, Conceptual Site Plan and Renderings are consistent with the ordinances and regulations of the City of Bonita Springs in effect as of the Effective Date (as they pertain to the Premises and/or Park Parcels), and the Landlord will not implement or otherwise approve any changes to

such ordinances and regulations if the effect would cause the Project, Conceptual Site Plan and/or Renderings to be inconsistent with such ordinance and regulations.

All representations and warranties of Landlord contained in this Lease shall be deemed made as of the Effective Date and the Rent Commencement Date. Landlord shall indemnify, defend and hold Tenant harmless against any loss, cost, claim, liability or expense arising from any of the representations or warranties contained in this Lease not being true and correct as of the Effective Date and Delivery Date.

ARTICLE X

MAINTENANCE AND REPAIR OF PREMISES AND PROJECT IMPROVEMENTS:

COMPLIANCE WITH LAWS; INSURANCE

Section 10.1. Repair and Maintenance.

- (a) At all times prior to the Delivery Date, Landlord shall retain possession of the Premises and shall be responsible, at Landlord's expense, for all maintenance and repairs of the Premises.
- (b) Commencing on and after the Delivery Date (and subject to the terms of Section 13.1, which shall control with regard to the parties' responsibilities to repair and restore the Premises in the event of casualty or condemnation), Tenant, at its sole cost and expense, shall throughout the Term keep and maintain the Improvements and all other portions of the Premises in good repair and condition and shall make all repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Premises in such state of repair and condition.

Section 10.2. Compliance with Laws. After the Delivery Date and for the remainder of the Term, Tenant shall comply with and cause the Premises to be in material compliance with (i) all Legal Requirements applicable to the Premises or the uses conducted on the Premises and (ii) the terms of any easements, covenants, conditions and restrictions affecting the Premises which are Permitted Encumbrances or are created after the Effective Date of this Lease with Tenant's written approval. If any additions, alterations, changes, repairs or other work of any nature, structural or otherwise, shall be required or ordered or become necessary at any time during the Term because of any of these requirements, the entire expense of the same, irrespective of when the same shall be incurred or become due, shall be the sole liability of Tenant; provided, however, that nothing herein shall limit or otherwise modify Landlord's liability for any breach of any representation or warranty under Section 9.1(b) above or Landlord's liability under Section 9.1(c) above. Notwithstanding the foregoing, (i) Tenant may in good faith and at its sole cost and expense (in its own name or in the name of Landlord or both, as Tenant may determine appropriate) contest alleged violations of law, rules and regulations, and (ii) Tenant shall not be deemed to have defaulted under or breached this Lease as a result of its failure to comply with any Legal Requirements until a final and unappealable court order against Tenant has been entered enforcing the same and the period of time reasonably necessary to effect compliance therewith has passed. If requested by Tenant, Landlord will join Tenant as a party to any such contest; provided, however, that Landlord shall not be obligated to incur any expense in connection therewith.

Section 10.3. Casualty Insurance. Commencing on and at all times after the Delivery Date, Tenant at its sole expense shall keep all Improvements on the Premises insured against loss by fire and all of the risk and perils usually covered by an "all risk" endorsement to a policy of fire insurance upon property comparable to the Project Improvements, including, without limitation, wind coverage, vandalism and

malicious mischief endorsements, in an amount equal to at least one hundred percent (100%) of the replacement cost of the Project Improvements. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named an additional insured under this policy. Notwithstanding anything to the contrary set forth herein, Tenant shall not be required to obtain and maintain the insurance described in this Section 10.3 until immediately prior to the termination of the builder's risk insurance on the Project Improvements described in Section 10.4 below.

Section 10.4. Builder's Risk Insurance. Beginning on or prior to the date that Tenant commences construction of the Project Improvements and continuing until completion of construction of the Project Improvements, Tenant at its sole expense shall maintain or cause to be maintained builder's risk insurance covering the construction of the Project Improvements, in an amount not less than the full insurable value of the Project Improvements, and materials supplied in connection with the Project Improvements. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named as an additional insured under this policy.

Section 10.5. Certificates. Within five (5) days of _____, Tenant shall deliver to Landlord certificates of the insurance required under this Lease. Each certificate shall provide that the insurer will not cancel the policy except after thirty (30) days prior written notice to Landlord, provided, however, that only ten (10) days' prior notice shall be required for non-renewal or cancellation due to non-payment of premium. Prior to the expiration of each such insurance policy, Tenant shall deliver to Landlord copies of a renewal policy or binder which shall comply with the foregoing provisions with respect to prior notice of cancellation thereof being given by the insurance company to Landlord. In the event of the failure of Tenant to procure and deliver such renewal policy or policies or binder or binders therefor within the time above prescribed, Landlord shall be permitted to do so and the premiums charged therefor shall be borne and paid promptly by Tenant.

Section 10.6. Liability Insurance. Commencing on and after the Delivery Date, Tenant agrees to maintain or cause to be maintained at all times thereafter during the Term comprehensive general liability insurance as well as umbrella liability coverage, in which Landlord (and if requested in writing by Landlord, Landlord's mortgagee) shall be named as an additional insured with minimum limits of liability in respect of personal injury of not less than Two Million and No/100 Dollars (\$2,000,000.00) for each person and Two Million and No/100 Dollars (\$2,000,000.00) for each occurrence/ Four Million (\$4,000,000.00) in the aggregate, and an umbrella liability policy providing for not less than Ten Million (\$10,000,000.00) in liability coverage. With respect of property damage a broad form policy with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence (each of such amounts shall be subject to be increased from time to time as Landlord may reasonably request to reflect declines in the purchasing power of the dollar). All insurance policies required by this provision shall be obtained by Tenant at Tenant's expense. Said insurance policies shall provide for at least thirty (30) days' notice to Landlord before cancellation, provided, however, that only ten (10) days' prior notice shall be required for non-renewal or cancellation due to non-payment of premium, and shall include a waiver of subrogation by the insurance carrier.

Section 10.7. Premiums. All premiums and charges for all of said insurance policies shall be paid by Tenant when due. If Tenant shall fail and neglect to make any payment when due, Landlord may, but shall not be obligated to, upon fifteen (15) days prior written notice, make such payment or carry such policy, and the amount of any premium paid by Landlord shall be repaid by Tenant to Landlord by no later than ten (10) days after written demand.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

Section 11.1. Assignment; Subleasing. Tenant, without the approval of Landlord, and at any time and from time to time during the Term of this Lease, shall have the right to assign this Lease, or its rights hereunder, to any person or entity in Tenant's sole discretion. Upon any assignment by Tenant of all of its rights under this Lease, to any assignee that expressly assumes all obligations of "Tenant" under this Lease arising on and after the effective date of such assignment, the assigning-Tenant shall be automatically released from all obligations and liabilities accruing under this Lease on and after the effective date of such assignment. Any assignee of Tenant's rights hereunder shall provide Landlord with written notice of such assignment by no later than sixty (60) days after the effective date of such assignment. In addition, Tenant, without the approval of Landlord, and at any time and from time to time during the Term of this Lease, shall have the right to sublet and/or sub-license all or any portion of the Premises to any third parties, in Tenant's sole discretion.

Section 11.2. Recognition. If for any reason this Lease is terminated prior to the expiration of the Term, Landlord agrees such termination will not result in a termination of any "Qualified Sublease" (as defined below) and any Qualified Sublease will continue for the duration of its term and any extensions thereof as a direct lease between Landlord and the subtenant thereunder, with the same force and effect as if Landlord had originally entered into such sublease as the landlord thereunder. Landlord will execute an instrument evidencing Landlord's agreement to recognize a particular Qualified Sublease in accordance with foregoing provisions within twenty (20) days after notice from Tenant (or direct written request. From such subtenant) that the subtenant thereunder has requested such an instrument. As used herein, a "**Qualified Sublease**" means a sublease or sub-license agreement entered into between Tenant and a subtenant or sublicensee (a) that demises or licenses any portion of the Premises to a bona fide sub-tenant or sub-licensee at an arm's-length rate, and (b) the term of which (including any extension options) does not extend beyond the existing Term of this Lease (including any then-exercised extensions) at the time such sublease/sublicense is signed.

ARTICLE XII

FINANCING - ENTIRE SECTION REMAINS UNDER REVIEW BY TENANT'S FINANCE DEPT..

Section 12.1. Tenant's Financing. Tenant shall have the right during the Term and any Extended Term to subject Tenant's leasehold interest in the Premises to one or more mortgages, deeds of trust, assignments of lease, security agreements or other methods of financing or refinancing (a "**Mortgage**"), or to any one or more extensions, modifications or renewals or replacements of a Mortgage. Tenant shall immediately notify Landlord in writing of the name and address of any Mortgagee.

Section 12.2. Landlord's Financing. Landlord shall have the right to mortgage its fee simple title to the Premises, provided that any such mortgage shall be expressly subject and subordinate to all of the rights and interests of Tenant under this Lease, and to the rights and interests of any Mortgagee, including without limitation, the rights and interests of any Mortgagee under a New Lease contemplated by Section 12.5. However, under no circumstance shall the foregoing subjection provide the Mortgagee with the ability to impair the right of Landlord (or Landlord's mortgagee) to terminate this Lease in the event of Tenant's default hereunder (subject only to Mortgagee's express rights under this Article XII). If Landlord does exercise its right to mortgage its fee simple title to the Premises, then such mortgagee shall execute and deliver a non-disturbance agreement in favor of Tenant and its Mortgagee, the form and substance of which must be reasonably acceptable to such mortgagee, Tenant and its Mortgagee.

Section 12.3. Notice to Mortgagee.

- (a) In the event Tenant shall be in non-monetary default under this Lease, Landlord shall send a copy of the written notice of the default to Mortgagee at its address as provided in writing to Landlord by Tenant. Mortgagee shall have until the later of (i) thirty (30) days after delivery of the written notice from Landlord, or (ii) twenty (20) days after the expiration of Tenant's cure period, within which to cure or remove the default, and if the default cannot with diligence be cured within such period, then Mortgagee shall have a reasonable time thereafter to effect such cure, provided that Mortgagee promptly commences to cure the same and thereafter pursues the curing of the default with diligence.
- (b) In the event Tenant shall be in monetary default under this Lease, Landlord shall send a copy of the written notice of the default to Mortgagee at its address as provided in writing to Landlord by Tenant. Mortgagee shall have until the later of (a) twenty (20) days after delivery of the written notice from Landlord, or (b) ten (10) days after the expiration of Tenant's cure period, within which to cure the monetary default.
- (c) Notwithstanding any other provision of this Lease, Landlord shall not have any right pursuant to this Lease or otherwise to terminate this Lease due to Tenant's default unless Landlord shall have first given a copy of the written notice of default to Mortgagee and unless Mortgagee shall have failed to cure or remove, or cause to be cured or removed, the default, within the time required by this Section 12.3.

Section 12.4. Acceptance of Cure. Landlord will accept performance by Mortgagee of any covenant, agreement or obligation of Tenant contained in the Lease with the same effect as though performed by Tenant, provided that such performance occurs within the time required by this Lease or within the cure periods provided to the Mortgagee under the terms of this Lease.

Section 12.5. New Lease. If this Lease is terminated for any reason, including, but not limited to, any termination following Mortgagee's failure to cure a default as permitted in Section 12.3, or in the event of the rejection or disaffirmance of this Lease pursuant to any Debtor Relief Laws, Landlord will enter into a new lease of the Premises with Mortgagee or its designee or nominee within thirty (30) days after the request of Mortgagee. The new lease shall be effective as of the date of termination, rejection or disaffirmance of this Lease and shall be upon the same terms and provisions contained in this Lease (including the amount of the Base Rent, Percentage Rent and other sums due from Tenant hereunder), but with the applicable term ending on the same date that this Lease would have ended had this Lease not been terminated. In order to obtain a new lease, Mortgagee must make a written request to Landlord for the new lease within sixty (60) days after the Mortgagee is notified in writing of the effective date of termination, rejection or disaffirmance of the Lease, as the case may be, and the written request must be accompanied by (i) a copy of the new lease, duly executed and acknowledged by Mortgagee or the party designated by Mortgagee as tenant, and (ii) payment of all Base Rent, Percentage Rent and other sums that would have been due and payable by Tenant under this Lease but for the rejection, disaffirmance or termination. If Mortgagee, or the party so designated by the Mortgagee, shall have entered into a new lease with Landlord pursuant to this Section 12.5, then any default under this Lease that cannot be cured by the payment of money shall be deemed cured. Mortgagee's rights under this Section 12.5 are in addition to, and not limited by, Mortgagee's right to cure under Section 12.3. From the effective date of termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease or the expiration of the period during which Mortgagee may make a request, Mortgagee may, upon payment of the Base Rent, Percentage Rent and any other sums as may be due from Tenant, use and enjoy the leasehold estate created

by this Lease without hindrance by Landlord, provided that the liability insurance required under Section 10.6 is maintained at all times during Mortgagee's use and/or occupancy of the leasehold estate.

Section 12.6. Delay for Foreclosure. If Landlord has given Mortgagee notice of Tenant's default under Section 12.3 and Mortgagee desires to cure Tenant's default but is unable to do so while Tenant is in possession of the Premises, or during the period of time that Mortgagee's proceedings are stayed by reason of Tenant being subject to Chapter 7 or 11 of the Bankruptcy Code of the United States, as amended, or if Landlord has elected to terminate this Lease and Mortgagee desires to obtain a new lease pursuant to Section 12.5 but has not yet acquired Tenant's leasehold interest in this Lease, then Mortgagee shall have the right to postpone the specified date for effecting a cure of this Lease or obtaining a new lease for a period reasonably sufficient to enable Mortgagee or its designee to acquire Tenant's interest in this Lease by foreclosure of its Mortgage or otherwise, as long as Landlord is paid the Base Rent, Percentage Rent and other sums due under this Lease during the postponement. Mortgagee shall exercise the right to extend the cure period or the date for obtaining a new lease by giving Landlord notice prior to the last date that Landlord would otherwise be entitled to elect a cure or obtain a new lease and by tendering to Landlord any Base Rent, Percentage Rent and other charges then in default.

Section 12.7. No Surrender. If Landlord has received written notice that a Mortgage is in effect, Landlord will not accept a voluntary surrender of this Lease. However, upon the abandonment of the Premises by Tenant, Landlord entering and securing the Premises shall not be deemed an acceptance of voluntary surrender by Tenant.

Section 12.8. Nonliability for Covenants. The provisions of this Article XII are for the benefit of Mortgagee and Landlord and may be relied upon and shall be enforceable by Mortgagee. Neither Mortgagee nor any other holder or owner of the indebtedness secured by the Mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Tenant contained in this Lease, unless and until Mortgagee or that holder or owner acquires the interest of Tenant.

Section 12.9. Further Cooperation. Upon the written request of Tenant, Landlord agrees to amend this Section 12 of this Lease to incorporate any changes or clarifications requested by Tenant or any proposed lender of Tenant (or any lender of any purchaser of Tenant's interest in this Lease) to secure such lender's agreement to provide debt financing for the construction of the Project and/or acquisition of the Tenant's interest in the Project.

Section 12.10. No Subordination of Fee. Nothing contained in this Lease shall be or ever will be construed as a subordination of Landlord's fee interest in the Premises or its reversionary interest in the Improvements to any Mortgage. Upon the expiration or termination of this Lease, except as specifically otherwise provided in this Article XII, any Mortgage of Tenant's interest in the Premises shall be null and void and any subleases of Tenant shall be deemed terminated unless, with respect to any subleases, a recognition and attornment agreement has been executed in connection with a sublease pursuant to Section 11.2, in which event the sublease may remain in effect pursuant to its terms and subject to the terms of the applicable recognition and attornment agreement.

Section 12.11. Certain Transfers. Notwithstanding any provision of this Lease to the contrary, Landlord agrees, if Mortgagee or any other Person succeeds to the interest of Tenant under this Lease as a result of foreclosure proceedings, the granting of a deed in lieu of foreclosure, or through any other means (any such person, a "Successor Tenant"):

- (a) The Successor Tenant shall become a substituted Tenant under this Lease without necessity of any consent of, approval by or notification to Landlord;

(b) If the Successor Tenant is the Mortgagee or a nominee or designee of Mortgagee, (i) such Person shall not be required to assume Tenant's obligations under this Lease, but shall be deemed to have agreed to perform all of Tenant's obligations hereunder only from and after the date of such acquisition and only so long as such purchaser is the owner of the leasehold estate; (ii) such Person, upon any assignment of the leasehold estate, shall be relieved of all obligations under the Lease; and (iii) Lessor shall look solely to the interest of such Successor Tenant in the Premises in the event of the breach or default by such Successor Tenant under the terms of this Lease and Landlord agrees that any judgment or decree to enforce the obligations of such Successor Tenant shall be enforceable only to the extent of such interest of such Successor Tenant in the Premises.

Section 12.12 Recognition Agreement. Landlord agrees that it will, from time to time, and at Tenant's request, execute a ground lessor/recognition agreement with and in favor of any Mortgagee in connection with Tenant financing or refinancing all or part of the purchase of Tenant's interest in the Lease and/or the construction or renovation of the Improvements. Such agreement shall be in form and content reasonably acceptable to such Mortgagee and Landlord and will be provided by Landlord upon the written request of Mortgagee or Tenant within fifteen (15) days of written request therefor. Tenant agrees that it will, from time to time, and at Landlord's request, execute a ground lessee/recognition agreement with and in favor of any mortgagee of Landlord in connection with Landlord financing or refinancing all or any part of Landlord's fee simple interest in the Premises. Such agreement shall be in form and content reasonably acceptable to such mortgagee and Tenant and will be provided by Tenant upon the written request of Landlord's mortgagee or Landlord within fifteen (15) days of written request therefor.

Section 12.13 Proceeds of Insurance; Condemnation. Notwithstanding anything in this Lease to the contrary, Landlord agrees that (i) Mortgagee shall be entitled to participate in any adjustment or settlement regarding insurance or condemnation proceeds or awards, to collect and hold any such proceeds or awards (and, if such proceeds or awards are paid to Landlord, the same shall be promptly paid to Mortgagee) and (ii) Mortgagee shall have the right, in its sole discretion, to determine and direct whether any such proceeds or awards are made available for the restoration of the Improvements or are applied to the repayment of the loan secured by the Mortgage. If Mortgagee makes such proceeds available to Tenant for restoration, Mortgagee may hold such funds as depository. Landlord hereby subordinates any right it may have under the Lease to receive such insurance proceeds and condemnation proceeds to protect Mortgagee's right to receive such proceeds. During the term of any Mortgage, Landlord waives any requirement under this Lease requiring that Landlord be named as a loss payee under any casualty or property insurance policy maintained by Tenant.

ARTICLE XIII

CASUALTY AND CONDEMNATION

Section 13.1. Casualty. If the Project Improvements shall be damaged or rendered wholly or partially untenable by fire or other casualty during the Term, no Rent shall abate during such period, whether the Land and Improvements are tenantable or not, and:

- (a) if there are at least seventy (70) full Calendar Years remaining in the Lease Term (measured from the date of the casualty) Tenant shall promptly rebuild or repair the

Project Improvements to substantially their former condition, at Tenant's sole cost and expense; OR

- (b) If there are if there are at least forty (40) full Calendar Years remaining in the Lease Term (measured from the date of the casualty) but less than 70 Calendar Years, and if Landlord notifies Tenant, in writing and by no later than ninety (90) days after the occurrence of such casualty (the "Notice Deadline"), that Landlord will amend this Lease to grant Tenant the right to extend the Term at least two (2) times, for ten (10) additional years per extension (a "13.1(b) Extension Grant Notice"), then Tenant shall promptly rebuild or repair the Project Improvements to substantially their former condition, at Tenant's sole cost and expense. If Landlord fails or refuses to provide a 13.1(b) Extension Grant Notice to Tenant by no later than the Notice Deadline, then Tenant shall have the right, but not the obligation, to terminate this Lease by furnishing written notice thereof to Landlord by no later than ninety (90) days after the Notice Deadline and in such event this Lease shall be terminated and the parties hereto shall have no further obligations hereunder except for any obligations that survive the termination or expiration of this Lease.
- (c) If there are if there are at less than forty (40) full Calendar Years remaining in the Lease Term (measured from the date of the casualty), and if Landlord notifies Tenant, in writing and by no later than the Notice Deadline, that Landlord will amend this Lease to grant Tenant the right to extend the Term at least five (5) times, for ten (10) additional years per extension (a "13.1(c) Extension Grant Notice"), then Tenant shall promptly rebuild or repair the Project Improvements to substantially their former condition, at Tenant's sole cost and expense. If Landlord fails or refuses to provide a 13.1(c) Extension Grant Notice to Tenant by no later than the Notice Deadline, then Tenant shall have the right, but not the obligation, to terminate this Lease by furnishing written notice thereof to Landlord by no later than ninety (90) days after the Notice Deadline and in such event this Lease shall be terminated and the parties hereto shall have no further obligations hereunder except for any obligations that survive the termination or expiration of this Lease.

Section 13.2. Condemnation.

(a) Unless this Lease is terminated pursuant to Section 13.2(b), if a portion of the Land and Improvements shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("Condemning Authority") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue and there shall be no abatement of the Rent.

(b) If a portion of the Land and Improvements are so taken or sold, and that portion in Tenant's reasonable judgment is material to Tenant's use and occupancy of the Premises, or if all of the Premises is so taken or sold, Tenant may terminate this Lease by giving written notice to Landlord. This Lease shall then terminate on the day following the vesting of title in the Condemning Authority, except as provided below and except with respect to obligations and liabilities of Landlord and Tenant under this Lease that have arisen on or before the date of termination. Base Rent, Percentage Rent and Additional Rent and other charges under this Lease shall be prorated as of the date of termination, and upon termination Tenant shall satisfy and cause to be released any mortgages (including any Mortgage), liens or other encumbrances placed or suffered to be placed on the Premises by Tenant. In the event that Tenant shall fail to exercise its

option to terminate this Lease as provided in this subsection, or in the event that a part of the Premises shall be taken under circumstances under which Tenant will have no such option, Tenant shall be entitled to all condemnation proceeds and Tenant shall have the sole responsibility for restoring the Improvements to a complete architectural unit.

(c) Any award or compensation paid on account of any taking or sale described in this Section 13.2 wherein this Lease is terminated shall be allocated between Landlord and Tenant as follows: (i) first to Tenant for the value of Tenant's leasehold interest in the Premises taken; (ii) next, to Tenant for the value of any Improvements taken less the value of Landlord's reversionary interest in those Improvements, (iii) next, to Tenant in the outstanding amount secured by any outstanding Mortgage, less (i) and (ii), and (iv) the balance to Landlord.

ARTICLE XIV

DEFAULT; CERTAIN RIGHTS AND REMEDIES

Section 14.1. Default (Landlord/Tenant).

(a) The occurrence of any one or more of the following events (any such event being specified herein as a "failure" or "default") shall constitute an Event of Default under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Base Rent, Percentage Rent which continues unremedied for a period of five (5) business days after written notice thereof is given to Tenant by Landlord, or (y) any payment of Additional Rent or other sum herein required to be paid by Tenant which continues unremedied for a period of five (5) business days after written notice thereof is given to Tenant by Landlord (the occurrence of a default enumerated in this clause 14.1(a)(i) being hereafter referred to as a "Special Event of Default"); (ii) failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease and such default shall continue for a period of thirty (30) days after written notice thereof is given by Landlord to Tenant or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary provided that Tenant has commenced to cure such default within said period of thirty (30) days, and is actively, diligently, continuously and in good faith proceeding to remedy such default (iii) Tenant shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) or voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Premises, (C) voluntarily file a petition seeking relief under any Debtor Relief Law, or (D) voluntarily file a general assignment for the benefit of creditors; (iv) a court shall enter an order, judgment or decree appointing, with the voluntary consent of Tenant, a receiver or trustee for Tenant or for the Premises or approving a petition filed against Tenant which seeks relief under any Debtor Relief Law, and such order, judgment or decree shall remain in force, undischarged or unstayed, one hundred twenty (120) days after it is entered; (v) Tenant shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vi) the estate or interest of Tenant in the Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within one hundred twenty (120) days after such levy or attachment.

(b) If any Event of Default (including a Special Event of Default) shall have occurred, Landlord shall have the right at its option, then or at any time thereafter, to do any one or more of the following without demand upon or notice to Tenant:

(i) Upon the occurrence of a Special Event of Default (and in addition to Landlord's other rights and remedies hereunder), Landlord shall notify Tenant of such Special Event of Default in writing. If Tenant does not cure such Special Event of Default within ten (10) business days thereafter, Tenant shall be deemed in default, and Landlord may give Tenant written notice of termination of this Lease, subject to the rights of any Mortgagee to receive notice of and cure such default. If Tenant has within ten (10) business days after receipt of such notice cured the Special Event of Default and paid to Landlord, as liquidated damages, a late fee in the amount of ten percent (10%) of the past-due Rent (which amount shall be in addition to the past-due Rent), Landlord's notice of termination shall be deemed null and void. Additionally, if there is a Mortgagee of Tenant, and such Mortgagee has within the cure period provided under Section 12.3, above, cured such default, Landlord's notice of termination shall be deemed null and void.

(ii) Landlord may give Tenant notice of Landlord's intention to terminate this Lease on a date specified in such notice. At the option of Landlord, upon the date therein specified, unless the Event of Default for which the termination is effected has been cured by Tenant, the Term and the estate hereby granted and all rights of Tenant hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term, but Tenant shall remain liable for all its obligations hereunder through the date hereinabove fixed for the expiration of the Term, including its liability for Base Rent, Percentage Rent and Additional Rent as hereinafter provided.

(iii) Landlord may, whether or not the Term of this Lease shall have been terminated pursuant to clause (i) above give Tenant notice to surrender the Premises to Landlord on a date specified in such notice, at which time Tenant shall surrender and deliver possession of the Premises to Landlord unless the Event of Default for which the termination is effected has been cured by Tenant. Upon or at any time after taking possession of the Premises, Landlord may remove any persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant pursuant to clause (i) above.

(iv) After repossession of any of the Premises pursuant to clause (ii) above, whether or not this Lease shall have been terminated pursuant to clause (i) above, Landlord shall make a good faith, diligent attempt to relet the Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on market rate terms (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Premises, actual attorneys' fees and any actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude

Landlord from subsequently terminating this Lease as set forth above. Landlord may make such alterations as Landlord in its reasonable discretion may deem advisable. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing alterations and in reletting any of the Premises, including fees and commissions of attorneys, architects, agents and brokers.

(v) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity. However, Landlord shall not have the right to accelerate Rent.

(vi) all amounts due Landlord (including amounts due under a Special Event of Default) shall bear interest at the Default Rate, commencing on the date of such default and continuing through the date Landlord receives payment from Tenant (and regardless of any notice or cure period).

(c) In the event of any expiration or termination of this Lease or repossession of any of the Premises by reason of the occurrence of an Event of Default, Tenant shall pay to Landlord Base Rent, Percentage Rent, Additional Rent and all other sums required to be paid by Tenant to and including the date of such expiration, termination or repossession and, thereafter, Tenant shall, until the end of what would have been the Term in the absence of such expiration, termination or repossession, and whether or not any of the Premises shall have been relet, be liable to Landlord for and shall pay to Landlord as liquidated and agreed current damages: (i) Base Rent, Percentage Rent, Additional Rent and all other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting pursuant to Section 14.1(b)(iii) and from tenants under any subleases, after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting (including all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, costs of alteration and expenses of preparation for reletting). Tenant hereby agrees to be and remain liable for all sums aforesaid and Landlord may recover such damages from Tenant and institute and maintain successive actions or legal proceedings against Tenant for the recovery of such damages. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when the Term would have expired by limitation had there been no such Event of Default.

(d) Each of Tenant and Landlord (herein called "**Paying Party**") agrees to pay to the other party (herein called "**Demanding Party**") any and all reasonable costs and expenses (including, without limitation, attorneys' fees) incurred by the Demanding Party in connection with any litigation or other action instituted by the Demanding Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Section 14.1(d) shall be due and payable by Tenant to Landlord as Additional Rent.

(e) If Landlord fails or refuses to comply with any of its obligations hereunder (or under the REA) and such failure continues after the expiration of a thirty (30) day written notice and cure period, then Tenant shall be entitled to terminate this lease and/or pursue all other legal and/or equitable remedies available under applicable law, including, without limitation, the right to seek injunctive relief and/or the right to self-help. All remedies of Tenant shall be cumulative and non-exclusive and the exercise by Tenant of one remedy shall not be deemed a waiver by Tenant of any other available remedies. If, as a result of a Landlord default hereunder (or under the REA) that remains uncured after the applicable notice and cure period, then in addition to all other remedies, Tenant may (but shall not be required to) endeavor to cure such default, at Landlord's expense, and

in such event Landlord shall reimburse Tenant for all costs and expenses incurred by Tenant in curing (or attempting to cure) such Landlord default, by no later than fifteen (15) days after receipt of written demand from Tenant, failing which Tenant shall be entitled to off-set such amounts against Rent due or to become due hereunder.

NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, NEITHER THE LANDLORD NOR THE TENANT SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST OPPORTUNITY OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, AND NO MULTIPLIER OR SIMILAR CONCEPT SHALL BE APPLIED FOR PURPOSES OF CALCULATING LOSSES.

ARTICLE XV

INDEMNIFICATION

Section 15.1. Indemnification.

(a) Tenant agrees to defend, pay, protect, indemnify, save and hold harmless Landlord from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, occurring on or after the Delivery Date and arising from the Project Improvements or the use, non-use, occupancy, condition, maintenance, repair or rebuilding of the Project Improvements, and any injury to or death of any person or persons or any loss of or damage to any property, real or personal, in any manner arising therefrom, if any, causing or contributing to said injury, death, loss, damage or other claim; except to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is caused by the negligence of Landlord or the intentional wrongful act of Landlord; if such loss is caused in part (but not entirely) by the negligence of Landlord or the intentional wrongful act of Landlord, then the principals of comparative negligence shall apply and Tenant's indemnification obligations hereunder shall only extend to the portion of the loss not attributable to Landlord. In case any action or proceeding is brought against Landlord by reason of any such claim against which Tenant has agreed to defend, pay, protect, indemnify, save and hold harmless pursuant to the preceding sentence, Tenant covenants upon notice from Landlord to resist or defend Landlord in such action (with counsel selected or approved by Landlord), with the expenses of such defense paid by Tenant, and Landlord will cooperate and assist in the defense of such action or proceeding if reasonably requested so to do by Tenant. The obligations of Tenant under this Section 15.1(a) shall survive any termination of this Lease. Tenant's obligation of indemnification shall not apply to those portions of liabilities, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments attributable to the willful, wanton or neglectful action or inaction of Landlord (using comparative negligence principals).

(b) Landlord agrees to defend, pay, protect, indemnify, save and hold harmless Tenant from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, arising from an intentional or negligent

act or omission of Landlord or Landlord's employees, and any injury to or death of any person or persons or any loss of or damage to any property, real or personal, in any manner arising therefrom, if any, causing or contributing to said injury, death, loss, damage or other claim; except to the extent that if such loss is caused in part (but not entirely) by the negligence of Tenant or the intentional wrongful act of Tenant, then the principals of comparative negligence shall apply and Landlord's indemnification obligations hereunder shall only extend to the portion of the loss not attributable to Tenant. In case any action or proceeding is brought against Tenant by reason of any such claim against which Landlord has agreed to defend, pay, protect, indemnify, save and hold harmless pursuant to the preceding sentence, Landlord covenants upon notice from Tenant to resist or defend Tenant in such action, with the expenses of such defense paid by Landlord, and Tenant will cooperate and assist in the defense of such action or proceeding if reasonably requested so to do by Landlord. The obligations of Landlord under this Section 15.1(b) shall survive any termination of this Lease. Landlord's obligation of indemnification shall not apply to those portions of liabilities, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments attributable to the willful, wanton or neglectful action or inaction of Tenant (using comparative negligence principles).

(c) NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, NEITHER THE LANDLORD NOR THE TENANT SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST OPPORTUNITY OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, AND NO MULTIPLIER OR SIMILAR CONCEPT SHALL BE APPLIED FOR PURPOSES OF CALCULATING LOSSES.

ARTICLE XVI

HAZARDOUS SUBSTANCES; CONCEALED OR UNKNOWN CONDITIONS

Section 16.1 Hazardous Materials.

- (a) "Environmental Laws" means all Laws relating to (i) emissions, discharges, spills, releases or threatened releases of Hazardous Materials onto or into, or the presence of Hazardous Materials on or in, land, ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, or septic systems, (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials, or (iii) the protection of human health or the environment.
- (b) "Hazardous Materials" means any substance (i) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental Laws, (ii) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, (iii) which is or becomes regulated by any Governmental Authority, or (iv) the presence of which causes or threatens to cause a bona fide risk to human health or the environment or a nuisance to the Project, or the Premises or to adjacent properties or premises (including the).

- (c) “Hazardous Materials Liabilities” as used herein means all claims, damages, losses, forfeitures, expenses or liabilities arising from or caused in whole or in part, directly or indirectly, by a breach by the other party of its representations, warranties or covenants hereunder that pertain to Hazardous Materials, including, without limitation, all costs of defense (including reasonable attorneys’ fees and other costs of litigation), all consultants’ fees, and all costs of investigation, repair, remediation, restoration, cleanup, detoxification or decontamination, and/or preparation and implementation of any closure, remedial action or other required plan.

Section 16.2 Landlord’s Obligations. Landlord represents and warrants that as of the Effective Date: (i) the Premises and are in compliance with all Environmental Laws, and (ii) there is no Hazardous Materials in, on or about the Premises or Park Parcels. During the Term of this Lease, Landlord will not use, generate, place, store, release or otherwise dispose of, or permit the use, generation, placing, storage, release or disposal of, Hazardous Materials in the Project, except in accordance with all Environmental Laws. If during the performance of Tenant's Work, or at anytime during the Term, Hazardous Materials are discovered in any portion of the Project or the Premises, then Landlord will promptly undertake or cause to be undertaken remediation or removal of the Hazardous Materials in accordance with all Environmental Laws at Landlord’s sole cost and expense.

- (a) In connection with the preceding paragraph, if any Hazardous Materials must be removed from the Premises and disposed of off site, such Hazardous Materials shall remain the property of the Landlord and any such removal and disposal of such Hazardous Materials to an off-site location shall be the responsibility and obligation of the Landlord at its sole cost and expense. In performing its obligations hereunder, Landlord shall execute all manifests and other documents which are required to cause the Hazardous Materials to be removed from the Premises and disposed of at an off-site location, and all required authorizations and permits from governmental agencies shall be obtained in the name of the Landlord.
- (b) Within fourteen (14) days of discovery of Hazardous Materials, Landlord will provide to Tenant an estimate of time from a reputable engineer or contractor of the time that it will take to remediate and remove Hazardous Materials. Tenant may review such estimate with its own consultants. If the remediation or removal of the Hazardous Materials will in Tenant’s reasonable estimation take longer than sixty (60) days to remove and correct; or if such remediation or removal is not actually completed within ninety (90) days, then in either event Tenant shall have the option to terminate the Lease, by giving Landlord written notice, whereupon, the parties shall be released from all obligations under the Lease, and Landlord shall reimburse Tenant for all costs of studies, reports, consultants, tests, and any other costs in connection with the discovery of Hazardous Materials, within 10 days of such termination.
- (c) Prior to any remediation, Landlord shall present to Tenant the Remediation Plan (the “Remediation Plan”) for Tenant’s prior written approval. If the presence of any Hazardous Materials that Landlord is required to remediate or remove pursuant to this Lease or the remediation or removal thereof precludes the normal operation of Tenant’s business from all or any portion of the Premises or the Project and Tenant notifies Landlord of such preclusion, then

(A) Rent will equitably abate during the performance of such remediation or removal in proportion to the nature and extent of the interference with Tenant's normal operation.

- (d) Landlord will indemnify, defend and hold Tenant and the shareholders, officers, directors, partners, members, managers, employees, agents, contractors, subtenants, assignees, licensees, concessionaires and customers ("Affiliated Parties") of Tenant harmless from and against, and reimburse Tenant and Tenant's Affiliated Parties for, all "Hazardous Materials Liabilities" (as defined in subparagraph (3) above) asserted against or Tenant or Tenant's Affiliated Parties arising out of a breach of the representations, warranties or obligations and covenants set forth in this Article XVI.

Section 16.3 Tenant's Obligations. During the Term, Tenant will not use, generate, place, store, release or otherwise dispose of Hazardous Materials in the Premises or Project, except in accordance with all Environmental Laws. In the event of a breach of the foregoing, Tenant will promptly undertake remediation or removal in accordance with all Environmental Laws. Tenant will indemnify, defend and hold Landlord harmless from and against, and reimburse Landlord for, all Hazardous Materials Liabilities asserted against or incurred by Landlord as a result of a breach of Tenant's obligations under this Section 16.3.

Section 16.4 Survival. The provisions of this Article XVI will survive the expiration or earlier termination of this Lease.

ARTICLE XVII

MISCELLANEOUS

Section 17.1. Estoppel Certificates. Landlord and Tenant shall, at any time and from time to time upon not less than ten (10) days prior request by the other party, execute, acknowledge, and deliver to the other party a statement in writing certifying that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the Rent and any other charges have been paid in advance, (ii) that no default hereunder on the part of the Landlord or Tenant, as the case may be, exists (except that if any such default does exist, the certifying party shall specify such default), and (iii) such other information related to the business terms of this Lease, as may be reasonably requested by the requesting party, it being intended that any such statement delivered pursuant to this Section 17.1 may be relied upon by any prospective purchaser or encumbrancer (including assignees) of the Premises.

Section 17.2. Release. If requested by Landlord, Tenant shall, upon termination of this Lease, execute and deliver to Landlord an appropriate release, in form proper for recording, of all Tenant's interest in the Premises.

Section 17.3. Non-Merger. There shall be no merger of this Lease, the leasehold estate created hereby with the fee estate in and to the Premises by reason of the fact that this Lease, the leasehold estate created thereby or any interest in either thereof, may be held directly or indirectly by or for the account of

any person who shall own the fee estate in and to the Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease, the leasehold estate including the holder of any mortgage upon the fee estate in and to the Premises, shall join in a written instrument effecting such merger.

Section 17.4. Holdover. Should the Tenant continue to occupy the Premises after the expiration of the Term or after a forfeiture incurred, whether with or against the consent of the Landlord, such tenancy shall be a tenancy at sufferance and in no event a tenancy from month to month, or from year to year, and Base Rent and Percentage Rent due and payable hereunder shall be paid for such tenancy at sufferance period at a rate equal to 150% of the Base Rent and Percentage Rent in effect immediately prior to such sufferance period (plus Additional Rent), plus applicable sales tax.

Section 17.5. Notices. All communications, notices and exchanges of information contemplated herein or required or permitted to be given in connection with this Lease shall be in writing, and shall be deemed to have been given and to be effective (i) when delivered personally (including delivery by express or courier services), (ii) if mailed, on the date received or, if earlier, on the fourth (4th) business day after being deposited in the United States first class mail as registered or certified mail, postage prepaid, return receipt requested, or (iii) if sent by facsimile transmission, when transmitted, with confirmation, but not later than 5:00 p.m. local time of addressee (with request for assurance of receipt in a manner customary for communications of such type), provided that such communications, notices and exchanges are addressed or transmitted to the other party as follows:

If to Landlord:

with a copy to:

If to Tenant:

Attention: _____

Fax No.: _____

with a copy to:

Attention: _____

Fax No.: _____

Each party hereto shall have the right, by giving not less than five (5) days prior written notice to the other parties hereto, to change any address of such party for the purpose of notices under this Section 17.5.

Section 17.6. Successors and Assigns. The word “**Landlord**” as used in this Lease shall extend to and include any and all Persons, who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the Premises; and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of and are binding upon Landlord shall also inure to the benefit of and shall be, jointly and severally, binding upon the successors, assigns, and grantees of Landlord, and each of them, and any and all Persons who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the Premises hereby demised. The word “**Tenant**” as used in this Lease shall extend to and include any and all Persons who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Tenant hereunder and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of or are binding upon Tenant shall also inure to the benefit of and be jointly and severally binding upon the successors, assigns, or other representatives of Tenant, and of any and all Persons who shall at any time or from time to time during the term of this Lease succeed to the interest and estate of Tenant hereby created in the Premises.

Section 17.7. Modifications; Landlord Approvals. This Lease may be modified only by written agreement signed by Landlord and Tenant. By approving and executing this Lease, Landlord agrees that with respect to any lease amendments, consents or review and approval rights that the Landlord may (or by its nature must) grant after the Effective Date hereof, the then acting City Manager of the City of Bonita Springs or the then acting Director of Planning of the City of Bonita Springs shall each be authorized to execute such lease amendment and/or grant such approval or consent on behalf of the Landlord, as an administrative action.

Section 17.8. Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

Section 17.9. No Joint Venture. The relationship between Landlord and Tenant at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.

Section 17.10. Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to any person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and be in force to the fullest extent permitted by law.

Section 17.11. Governing Law. This Lease is being executed and delivered, and is intended to be performed, in the State of Florida and the laws of such state and of the United States shall govern the rights and duties of the parties hereto and the validity, construction, enforcement, and interpretation hereof. Venue for any action shall be in the Collier County, Florida.

Section 17.12. Entire Agreement. This Lease embodies the entire agreement between Landlord and Tenant relating to the subject matter hereof, and supersedes all prior agreements and understandings with respect thereto.

Section 17.13. Multiple Counterparts. This Lease may be executed in a number of identical counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; provided, however, that in making proof of this Lease, it shall not be necessary for any party hereto to produce or account for more than one such counterpart.

Section 17.14. Time of Essence. It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease.

Section 17.15. Intentionally Deleted.

Section 17.16. Memorandum of Lease. Each of Landlord and Tenant shall execute, acknowledge and deliver to the other a written Memorandum of this Lease to be recorded after the Effective Date, in the appropriate land records of the jurisdiction in which the Premises is located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of said recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail. Tenant agrees to pay when due and payable any and all charges, recording costs and taxes required in connection with the recordation of this Lease or such Memorandum of Lease. Upon the expiration or termination of this Lease Tenant shall, upon written request of Landlord, promptly execute and record a termination of such memorandum of lease, in form and content reasonably acceptable to Landlord.

Section 17.17. Attorneys' Fees. In the event that at any time during the term of this Lease either Landlord or Tenant shall institute any action, proceeding or appeal against the other relating to the provisions of this Lease, or incur any attorneys' fees in connection with any default hereunder whether or not any judicial action has been commenced, then, and in that event, the unsuccessful party in such action or proceeding shall reimburse the successful party for the reasonable expenses of attorneys' fees and disbursements incurred therein by the successful party as determined by a court and not by a jury.

Section 17.18. Consents. Unless otherwise expressly stated herein, whenever Landlord's or Tenant's consent or approval is required under this Lease, such consent or approval shall not be unreasonably withheld, qualified or delayed, which qualification shall specifically apply, without limitation, to all approvals and consents required of Landlord under Article V above.

Section 17.19. Waiver of Jury Trial. **THE PARTIES HERETO HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS AGREEMENT, ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT, OR IN CONNECTION WITH ANY OF THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY, OR THE EXERCISE OF ANY PARTY'S RIGHTS OR REMEDIES HEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. A COPY OF THIS PARAGRAPH MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. NONE OF THE PARTIES HERETO HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THEY WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH.**

Section 17.20 BROKERAGE COMMISSIONS: Each Party represents and warrants to the other that no other broker, agent, commission salesman or other person has represented the warranting Party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any such person or entity. Each Party further warrants that any compensation arrangement with the party or parties excepted from the foregoing warranty has been reduced to writing in its entirety in a separate agreement signed simultaneously with or before this Lease by the Party who owes or should pay the commission or compensation. Each of Landlord and Tenant agrees to indemnify and hold the other harmless from and against any and all costs or claims of any agent, broker or other person claiming to be acting on behalf of the indemnifying Party for fees,

commissions or other compensation by reason of the transaction contemplated by this Lease or otherwise resulting from breach by the indemnifying Party of the representations in this Section.

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IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

LANDLORD:

By: _____
Name: _____
Title: _____

TENANT:

[INSERT NAME], LLC,
a Florida limited liability company

By: _____
Name: _____
Title: _____

Exhibit F

REA core concepts

1. The Tenant will be granted an ingress/egress easement through the City Parking Space area
2. The Association shall have a blanket easement for access over the Park Parcels, for purposes of performing its maintenance and repair responsibilities.
3. The Tenant (and its sub-tenants and sub-licensees) shall have a perpetual access easement to the Park Parcels, for the purpose of use and enjoyment of the same.
4. For the avoidance of doubt, neither the Landlord nor the public shall be granted access nor use rights to any portion of the Premises.
5. The Maintenance Association will be responsible for (a) the day-to-day as well as extraordinary maintenance and repair of the Park Parcels and Park Improvements, and (b) any maintenance and/or repair activities pertaining to the Premises and for which the Tenant may (in its sole discretion) contract for with the Association.
6. The Maintenance Association shall be governed by a board of directors consisting of three (3) members, two of which shall be appointed by the Tenant, and one of which shall be appointed by the City manager (and, for the avoidance of doubt, the City manager may appoint himself/herself).
7. The Members of the Association shall be the Tenant and the Landlord, and the board of directors of the Association may appoint officers to carry out the day-to-day functions of the Association. From time-to-time, as invoiced by the Association to the Landlord and/or Tenant, the Landlord and Tenant shall pay to the Association their share of Association Expenses, in accordance with the following guidelines and procedures:
 - (a) The Landlord shall be responsible for paying one hundred percent (100%) of all Park Maintenance Costs and ____% of the Association Insurance Costs (as hereafter defined);
 - (b) The Tenant shall be responsible for paying all Association Expenses that are not the responsibility of the Landlord under sub-section (a), immediately, above.
 - (c) For purposes hereof “Association Insurance Costs” shall mean and refer to fidelity insurance and O&E insurance that the Association may maintain on the officers and directors of the Association, general liability insurance that the Association shall maintain (providing not less than \$2,000,000 per occurrence/ \$4,000,000 in the aggregate) with respect to liability claims (as to injury to property and/or person), and an umbrella liability policy of insurance providing the Association with at least \$10,000,000 in excess liability coverage. The liability insurance policies of the Association shall name both Landlord and Tenant as additional insureds (as well as any lender of Tenant).
 - (d) The Association shall keep records in reasonable detail (and shall instruct all maintenance and supply vendors to prepare and submit proposals, bids and all invoices in reasonable

detail) so that Park Maintenance Costs may be segregated from all other Association Expenses. Without limiting the generality of the foregoing, whenever the Association is obtaining bids or other proposals for work that will be undertaken at both the Premises and the Park Parcels, the Association shall obtain separate bids for that portion of the work to be performed at the Premises vs. the portion of the work to be performed at the Park Parcels, and Landlord and Tenant shall be provided with copies of all accepted proposals, so that Landlord and Tenant are provided with reasonable assurances that the pricing provided (as well as any discounts available due to economies of scale) is consistent between the work at the Premises and the work at the Park Parcels.

- (e) The Association shall have the right to invoice Landlord and/or Tenant, in advance, for routine and/or non-routine maintenance and repair work and Landlord and Tenant shall pay such invoices by no later than fifteen (15) days after receipt of the same. Without limiting the generality of the foregoing, the Association shall have the right to promulgate an annual maintenance budget based on the Association's good faith estimate Association Expenses, and in such event, may invoice the Landlord and Tenant on a monthly or quarterly basis (in advance and at the Association's discretion) to provide the Association with day-to-day funds to pay for such anticipated recurring expenses.
 - (f) All amounts due and owing to the Association by Landlord or Tenant shall, if not paid when due, bear interest at the annual rate of fifteen percent (15%) per annum until paid.
8. The Association shall maintain the Park Parcels in at least an appearance and condition that is substantially consistent with other city parks of the Landlord. However, it is acknowledged that keeping the Park Parcels in a reasonably attractive condition is essential for a proper overall presentation and enjoyment of the Project and that the Tenant would not make the considerable investment in the Project that the Tenant intends to make without assurances that the Park Parcels will be appropriately and consistently maintained. Therefore, the Tenant shall have the right to instruct the Association to enhance its maintenance efforts (in both frequency and/or scope of services) with respect to the Park Parcels, and in such event, the Association shall implement such instructions and all additional costs and expenses thereof shall nevertheless be included in the Park Maintenance Costs for which Landlord is solely responsible.

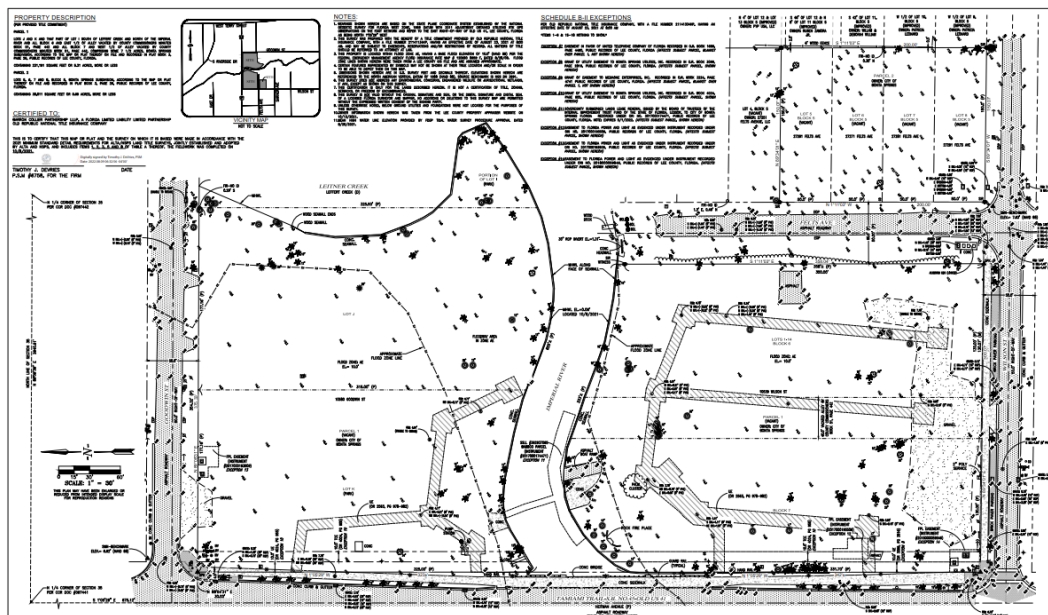
EXHIBIT G

Permitted Title Encumbrances

Draft Exhibits

- Exhibit A Project Parcel (Parcel 1 only)
- Exhibit B Conceptual Site Plan
- Exhibit C Lease Land & Public Use Parcel
- Exhibit D Preliminary Parking Plan
- Exhibit E Renderings
- Exhibit F Easement maintenance and cost sharing agreement (REA): Attached to lease Document
- Exhibit G Permitted Encumbrances (To be complete during Title Review)

Exhibit A:



Civil Engineers ■ Land Surveyors ■ Planners ■ Landscape Architects

DESCRIPTION

PARCEL 1: Lots J and K and that part of Lot I South of Leffert Creek and North of the Imperial River and all of Block 6 and the East 1/2 of alley vacated by County Commissioners Minutes Book 15, page 137 and Book 51, page 442 and all of Block 7 and the West 1/2 of alley vacated by County Commissioners Minutes Book 15, page 137 and Book 51, page 442, BONITA SPRINGS SUBDIVISION, according to the map or plat thereof on file and recorded in Plat Book 3, page 26, Public Records of Lee County, Florida.



Digitally signed by Timothy J.
DeVries, PSM
Date: 2022.08.09 06:44:24
-04'00'

Signed: _____ Date: _____

Timothy J. DeVries
Professional Surveyor and Mapper
State of Florida, License Number 6758

Exhibit B:

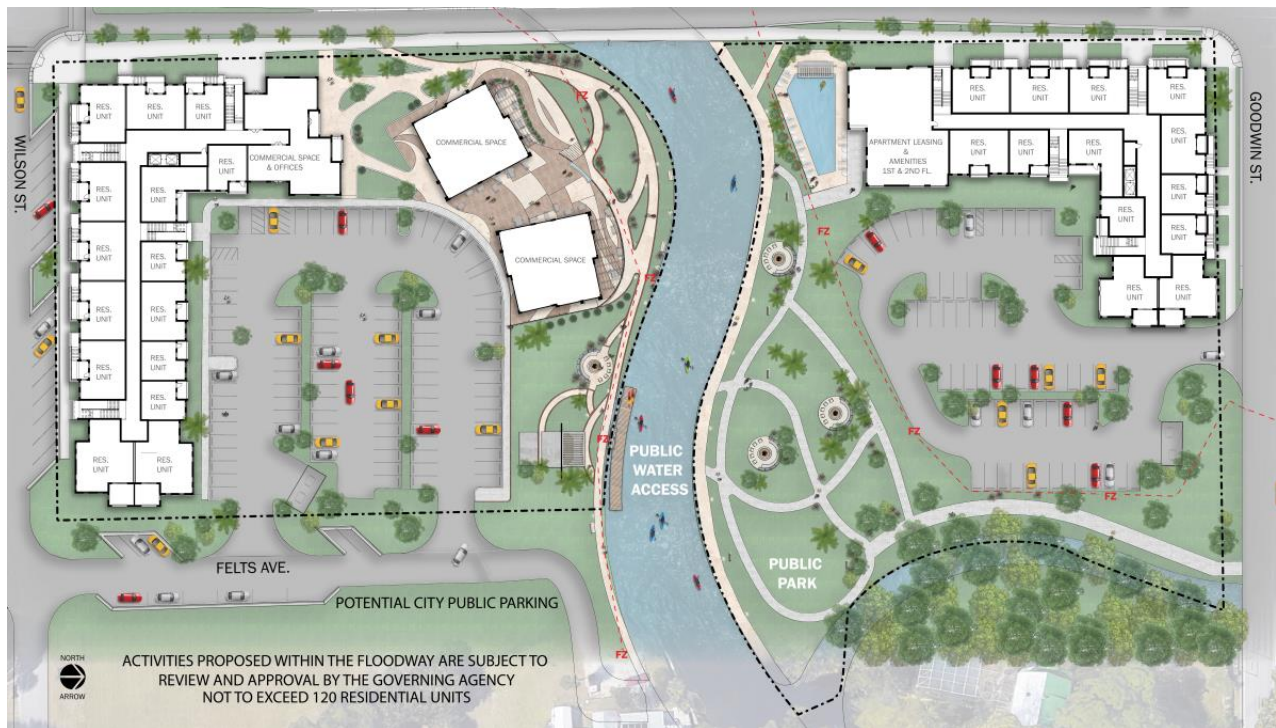


Exhibit C:



Exhibit D:

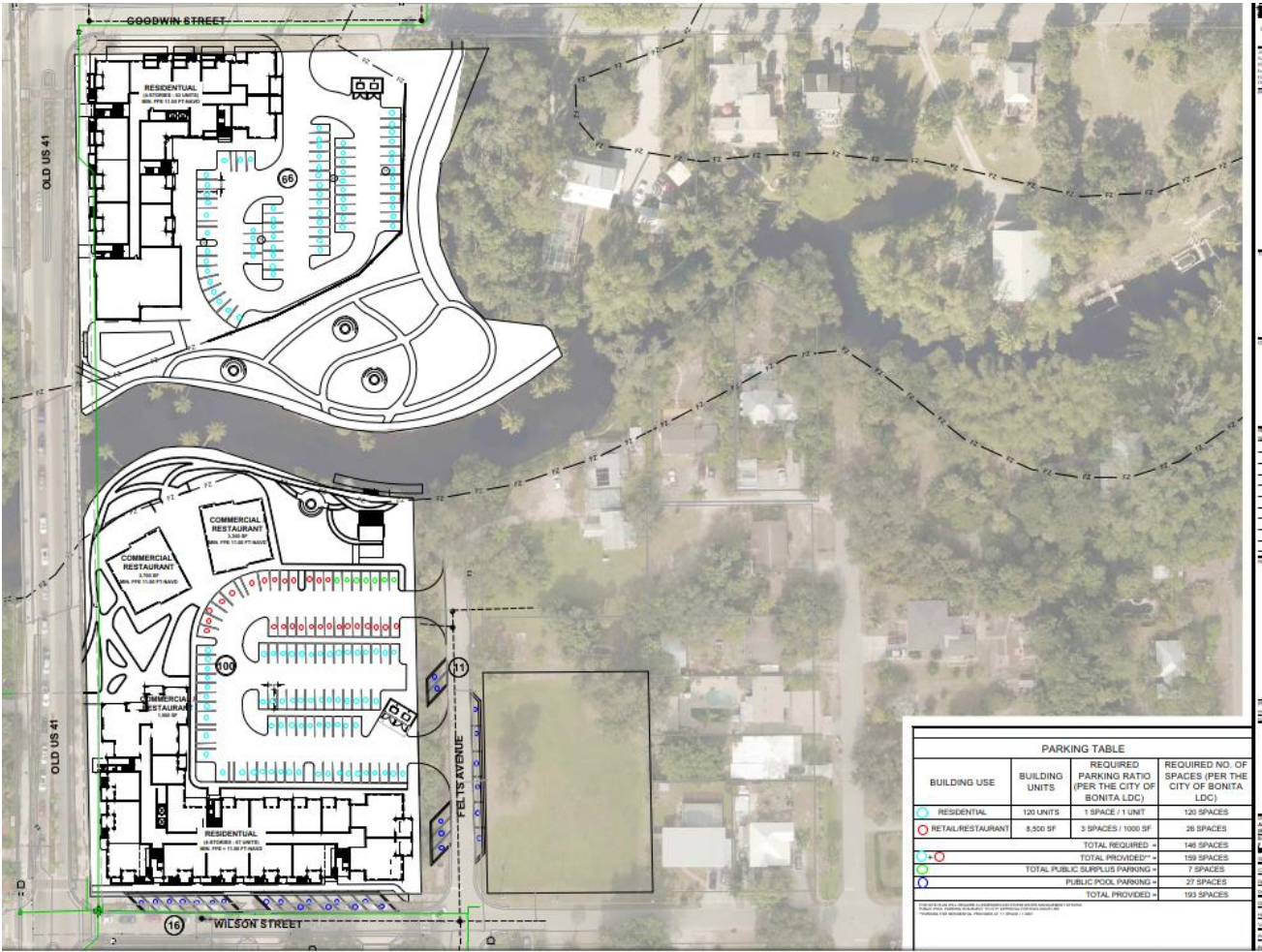


Exhibit E:



SOUTH BUILDING N.W. CORNER IMPERIAL x 41 | BONITA SPRINGS, FL



NORTH BUILDING N.W. CORNER IMPERIAL x 41 | BONITA SPRINGS, FL





SOUTH BUILDING S.W. CORNER | IMPERIAL x 41 | BONITA SPRINGS, FL



NORTH BUILDING S.W. CORNER | IMPERIAL x 41 | BONITA SPRINGS, FL





RIVERFRONT COMMERCIAL PLAZA | IMPERIAL x 41 | BONITA SPRINGS, FL



NORTH PARCEL PUBLIC PARK AND PRIVATE POOL | IMPERIAL x 41 | BONITA SPRINGS, FL





PUBLIC PATIO | IMPERIAL x 41 | BONITA SPRINGS, FL



PUBLIC WATER ACCESS | IMPERIAL x 41 | BONITA SPRINGS, FL





SOUTH BUILDING ENTRY | IMPERIAL x 41 | BONITA SPRINGS, FL



REQUESTED MOTION: Approve the Parks and Recreation Agreement between the City of Bonita Springs and the Casa Mexico Adult Soccer league for the 2022-2023 soccer season.

REQUESTOR: Nicole Perino, Parks and Recreation Director

AGENDA: Consent

STRATEGIC PRIORITY: No

BACKGROUND:

City Council annually reviews the Parks and Recreation Agreement, which provides the responsibilities of the Casa Mexico Adult Soccer League to use the city's soccer facilities for each soccer season. The league would like to renew this agreement for another one-year term. The league would like to continue being able to pay all the team fees until February 1, 2023, which allows the league sufficient time to register and collect fees from each team.

The Agreement also provides:

- The extent of City maintenance responsibility.
- When the individual leagues may use the facility, as well as clean up and parking requirements.
- Insurance requirements

STAFF RECOMMENDATION: Approve the agreement with the City of Bonita Springs and the Casa Mexico Adult Soccer league for the 2022-2023 soccer season.

ATTACHMENTS:

1. Draft Agreement
-

REVIEWERS:

City Manager: Arleen Hunter
City Attorney: Derek Rooney
City Clerk: Debra Filipek
Department Director: Nicole Perino

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

ADULT LEAGUE AGREEMENT CASA MEXICO SOCCER LEAGUE

THIS AGREEMENT is made and entered into this ____ day of September, 2022, by Casa Mexico Soccer League, hereinafter called "League" and the City of Bonita Springs, a municipal corporation of the State of Florida, hereinafter called the "City".

WITNESSETH:

WHEREAS, the League and the City recognize the need for public recreational facilities that contribute to a better quality of life for all facility patrons; and

WHEREAS, in the interests of providing the best possible sports program at the least cost to participants and users of City facilities, full cooperation between the League and the City is necessary; and

WHEREAS, it is in the best interests of the parties to outline the details of such cooperation.

NOW, THEREFORE, in consideration of these promises, the City does hereby agree to maintain certain improvements to City facilities, and the League agrees to participate in the maintenance of the entire facility used, pursuant to the schedule attached as Exhibit A, specifying dates, times and type of uses (e.g., practice, regular soccer season, all-star, tournaments).

A. CITY MAINTENANCE RESPONSIBILITY

1. City will mow and maintain the athletic fields and common areas.
2. City will coordinate the irrigation and lighting of the fields, so as to make the fields be available for use during the schedule.
3. City will coordinate the fertilization, herbicide treatment, pesticide treatment and fungicide treatment.
4. City will maintain the public restroom maintenance within the concession building.
5. City will maintain the exterior of the building and any infrastructure.
6. City will coordinate with the League volunteer staff to provide training for recommended maintenance procedures and safety precautions. Training of any new volunteers recruited during the scheduled items will become the responsibility of the League. In addition, the City will provide necessary maintenance and operational procedures for League use.

7. City will remove trash from receptacles and place into dumpsters if fields are used by any group other than our 3 soccer leagues.
8. The City will provide the equipment required to chalk in and paint fields, but will not provide the paint or chalk. This is subject to League responsibility below.
9. City will provide trash bags, litter grabbers and receptacles.
10. City recognizes the length of the individual season as follows:

Adult Soccer: September 8, 2022 through June 3, 2023

All tournaments and all-star games may be added with consent by City Parks and Recreation Director.

B. LEAGUE RESPONSIBILITIES

1. The League is responsible for all trash and litter pick-up from field areas that are used by the league, including the parking area.
2. The League is responsible for any replacement of chalk lining and paint material and equipment. League will paint the initial layout for the league, as well as being responsible for all other painting and chalking. League will be responsible for the maintenance and repair of equipment that is owned by the City of Bonita Springs during the League's season.
3. The League is responsible for maintaining interior portions of the concession building including meeting rooms i.e. cleaning, etc.
4. The League will stock and supply the concession stand and will keep all funds from the sale of items in the concession area at the City's Soccer Complex. The League agrees to design and maintain internal controls over its cash collection to ensure the safeguarding of funds, so that any profit resulting from the concession stand is used for the operation of the League.
5. The League is not permitted to sell items, including concession type operations at Marni fields unless the league obtains special permission from the City Parks and Recreation Director.
6. The City is not responsible for any lost, stolen or damaged items that are the property of the league. The League is responsible for their own property located within the Soccer Complex or Marni fields.

7. The League will be permitted access to the concession building (including the meeting room) one (1) hour before scheduled play begins, and will have one (1) hour to clean up and exit the concession building after the League's games have concluded. The League will be responsible to communicate with the Parks and Recreation Director for additional concession building and meeting room requests.
8. The League is responsible for paying its fee of \$375 per team for each team, which must be paid by February 1, 2023. This fee will be used to pay their portion of the utility charges, storage rooms, meeting rooms, restrooms and field use.
9. The League must provide the City with completed Parks and Recreation registration and waiver forms for each player before that player may participate in any activities on City facilities.
10. The League will be responsible for the cleaning and maintenance of the restrooms and common areas used by the League during the League's use of the fields.
11. The League will ensure that players, coaches, parents, league board members, and spectators follow a Code of Ethics.
12. The League will be responsible to follow and assist in the enforcement of the City of Bonita Springs Parks & Recreation Ordinance during league practices and play while on City property.
- 13. THE LEAGUE WILL BE PENALIZED FOR FAILURE OF THE LEAGUE TO MEET ANY OF ITS REQUIREMENTS ABOVE, ESPECIALLY (1) LEAVING TRASH ON THE PROPERTY, (2) PARKING IN UNAUTHORIZED LOCATIONS OR (3) ALLOWING UNAUTHORIZED VENDORS. PENALTIES ASSESSED BY THE CITY MAY INCLUDE A SUSPENSION FROM USE OF THE CITY PROPERTY, A FINE PER OCCURRENCE NOT TO EXCEED \$100.00, OR FOR REPEAT VIOLATIONS AFTER WARNING, TERMINATION OF THIS AGREEMENT AND CESSATION OF USE OF THE FACILITIES BY THE LEAGUE.**

C. GENERAL COOPERATION

1. City's contact person shall be the City Parks and Recreation Director. The league's contact person shall be the President, or designee of the League, as specified below:
Name: Juan Romero
Address: 9862 Connecticut St. Bonita Springs, FL 34135
Phone number: 239-322-9298

2. City will advise the League of any outside requests for field usage during permitted dates and times. The League shall have priority for use of the facility during primary League season, but the League agrees to cooperate with other groups wishing to use the facility. The League will allow other youth sports entities to use the fields for practice so long as such use does not conflict with the League's scheduled use. If there is an alternative League with at least twenty-five (25%) percent of players living within the corporate boundaries of the City of Bonita Springs, the League will accommodate practice times in such a manner so as not to interrupt that alternative League, or to have practice times that would affect school and parent schedules.
3. The City will supply to the League a schedule for use of the fields during regular season play.
4. The League will advise the City of Bonita Springs of changes in officers of the League within two (2) weeks of new term. The League will provide name and telephone numbers of new officer. The Parks and Recreation Director and the new president will acknowledge in writing this existing agreement, to be filed with the City Clerk.
5. All of the League coaches will participate in mandatory coaches' clinics provided by the City, County or particular League's District.

D. CAPITAL IMPROVEMENTS PROJECTS

1. Currently budgeted of future project requests will only be considered for approval upon successful performance of this agreement.
2. It is the policy of the City not to construct Capital Improvements which will negatively impact the limited resources of Parks and Recreation.
3. Facility additions, structures or construction of any kind will not be permitted on City property without a written request and approval by the Parks and Recreation Director.

E. TERM

1. Initial term of this agreement will be for one (1) year, commencing upon the date of execution, and will be reviewed annually and amended as needed in the same form as it was approved. The City may terminate agreement with (thirty) 30 days' notice.

F. INSURANCE

1. Insurance shall be provided per the attached insurance requirements for Sports Leagues. See Exhibit "B". City will be named as an additional insured.
2. League shall indemnify and hold the City harmless from any and all claims, liability, losses, and causes of action which may arise out of the willful, negligent, or unlawful acts or omissions of the league in its operations under this agreement and shall pay all claims and losses of any nature whatsoever in connection with, shall defend all suits, in the name of the City, when applicable, including appellate proceedings and shall pay all costs, judgments, and attorney's fees, which may issue thereon; provided, however, that nothing herein shall be construed to require the league to indemnify City against liability resulting from the willful, negligent, or unlawful acts or omissions of the City, not be liable for loss or damage incurred or occasioned by the league in the performance of operations under this agreement. This provision shall survive the termination of this agreement.

G. CONCESSION STAND OPERATIONS

1. League will be responsible for the concession stand revenue at the Soccer Complex. They will be responsible not only for the food and health criteria of serving the food, but also internal control of collection of cash. The league is responsible for paying the concession stand monthly fee of \$75.00 per month if utilized by the league.

H. COVID-19 ACKNOWLEDGEMENT

1. Both the City and the League acknowledge and understand the circumstances of the COVID-19 pandemic and will take all reasonable precautions, consistent with the applicable guidance issued by the Center for Disease Control (CDC) and the Florida Department of Health (FDOH) in order to limit the spread of COVID-19 and promote the health and safety of the players, coaches, parents, and City staff.
2. The City and the League acknowledge and understand the circumstances of the pandemic create a fluid situation and that the guidance provided by the CDC and FDOH may change during the term of this Agreement. Both parties shall monitor the situation closely and adjust as may become necessary.

3. In the event that any Order is issued by the City, by Lee County, by the Florida Governor, or by the President of the United States that affects the terms of this Agreement, such Order shall supersede. The City shall have the sole discretion as to whether the Agreement may endure any such Order, including, but not limited to, the suspension or cancellation of adult leagues.

CASA MEXICO SOCCER LEAGUE

_____ By: _____
Date President/Designee

WITNESSES:

(1) _____
Sign Print Name

(2) _____
Sign Print Name

CITY OF BONITA SPRINGS

AUTHENTICATION:

_____ City Clerk
Mayor

APPROVED AS TO FORM: _____
City Attorney

DATE FILED WITH CITY CLERK: _____

EXHIBIT A
SCHEDULE OF USE

EXHIBIT "B"
**INSURANCE REQUIREMENTS FOR SPORTS EVENTS
HELD AT CITY OF BONITA SPRINGS FACILITIES**

Your certificate of insurance must meet the following requirements:

Requirement #1	The City of Bonita Springs shall be added as an additional insured on the comprehensive general liability policy.
Requirement #2	Certificate holder shall be listed as follows: City of Bonita Springs 9101 Bonita Beach Road Bonita Springs, Florida 34135
Requirement #3	Each policy shall provide a 30 day notification clause in the event of cancellation, non-renewal or adverse change.

A. COMMERCIAL GENERAL LIABILITY

Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability and broad form property damage exposure with minimum limits of \$1,000,000. per occurrence for bodily injury and property damage.

B. ACCIDENT MEDICAL

Coverage shall apply to all participants in the Sports event and provide minimum aggregate limits of \$100,000. with minimum medical limits of \$5,000. (per person) and minimum dental limits of \$2,500 (per person). Said coverage is acceptable on an excess basis.

The organization will provide the City with evidence of the above referenced insurance by submission of a Certificate of Insurance to be on file with the City Clerk prior to onset of this agreement

You should provide your insurance agent with a copy of this sheet. If you or your insurance agent/producer has any questions about these requirements contact the City Clerk.

Please send or fax your certificates to:

Debra Filipek, City Clerk
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135
Phone: (239) 949-6262
Fax: (239) 949-6251

REQUESTED MOTION: Approve the Bald Eagle Management Plan for bald eagle nest LE050 located on the City's River Park property, in accordance with LDC Chapter 7 Article III – Bald Eagles.

REQUESTOR: Laura Gibson, Environmental Specialist, Community Development

AGENDA: Consent

STRATEGIC PRIORITY: #4 Environmental Protection

BACKGROUND:

The City of Bonita Springs protects its Southern Bald Eagle population through Objective 7.6 of the Conservation and Coastal Management Element of the Comprehensive Plan, which was incorporated into the City's Land Development Code (LDC) by Ordinance 10-05. The purpose of these regulations is to protect the eagle's nesting habitat from development and human-created disturbances such as construction and other activities. One way to help prevent disturbances is through a Bald Eagle Management Plan (BEMP) which the LDC requires for certain developments to establish protection practices for critical eagle nesting habitat through limitation of disturbance or alteration to these areas and management of the preserved portions of the critical eagle nesting habitat.

The LDC and National Bald and Golden Eagle Protection Act prohibit construction work during the nesting season without a Bald Eagle Management Plan and/or monitoring for the disturbance of eagle nesting per approved monitoring guidelines. No bald eagle nesting has occurred at this nest for four nesting seasons; however, nests and their buffer zones remain protected for a period of five years after the last nesting attempt.

The Development Order for Angler's Paradise is under review and approval is anticipated soon. Project planning started nearly fifteen years ago, and a Biological Opinion was obtained from the U.S. Fish and Wildlife Service for potential impacts to the eagle nest, which was then located in a different tree southwest of the current tree. Project planning was halted, and the same protections have been incorporated into the current BEMP. The BEMP addresses project activities with timelines for work in respect to the eagle nesting season and required monitoring of the eagles to determine disturbance and halting or adjustment of any construction activities observed to cause disturbance.

The Applicant and Staff are in agreement with the attached BEMP, and LDC Sec. 7-79(d)(2) requires approval of the BEMP by the City Council.

STAFF RECOMMENDATION: Approve

ATTACHMENTS:

1. Angler's Paradise BEMP
 2. Angler's Paradise Environmental Supplement (Exhibits)
 3. LDC 7, Article III
-

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 22-09-150
September 7, 2022

REVIEWERS:

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

Council Action: Approved __ Denied __ Deferred __ Other_____

BALD EAGLE MANAGEMENT PLAN

**ANGLER'S PARADISE,
BONITA SPRINGS, FL**

**AMENDED
MAY 2022**

Prepared by:



**TURRELL, HALL & ASSOCIATES, INC
3584 EXCHANGE AVENUE
NAPLES, FL 34104**

Site Description

The Anglers Paradise of Bonita Springs, Inc. (Anglers Paradise) property consists of approximately 24.39 acres in southern Lee County. The project is located off of Windsor Road that intersects Bonita Beach Road just west of US 41. The site is bordered to the east by US 41, commercial Development, and a City Park. It is bound to the south by a commercial shopping center and development, to the north by the Imperial River, and to the west by Windsor Road and single-family residences. The project was previously permitted by the SFWMD (permit #36-07247-P) in 2010 and the USACE (permit # 2005-02842(IP-BEM)) in 2011 as a multi-family residential development. The site was originally a trailer park with approximately 108 residential units (see the historic aerials available on the Lee County Property Appraiser). Most of the trailers were removed in 2005-2006. The entire site was cleared in 2010, all of the building pads were removed, and the perimeter berm was installed but then construction halted. Both permits have since expired, and the applicant is now requesting re-authorization of the residential development on a slightly smaller construction footprint than was previously permitted.

When previously permitted, the site consisted of 0.18 acre of jurisdictional wetlands, 0.72 acre of surface waters, and 27.38 acres of uplands (note: The original permits cited 28.28 acres of property, however the project footprint currently being permitted does not include lands at the south end of the prior project). The site was cleared, scraped down,, and portions of the perimeter berm were constructed under the previous permits utilizing fill and clean debris from the site. No additional fill was brought into the property at that time. Most of the site is now open area that is periodically mowed and there is an access road to the City Park bisecting the property along the eastern edge. The scraping of the property associated with the past clearing and construction of portions of the perimeter berm without additional components of the surface water management system has created a bowl effect and resulted in previously delineated upland areas transitioning into wetland areas. The site now contains 10.55 acres of wetland, 0.76 acre of surface waters (boat basin and swale), and 13.08 acres of upland (see Sheet 2 of the attached Exhibits).

The proposed development includes the residential construction, restoration and enhancement of the existing boat basin, and enhancement of the shoreline along the river. The restoration of the basin will impact approximately 0.01 acres of mangroves at the mouth of the basin which have established behind failed portions of the existing seawall. There is no way to repair the seawall without impacting these few mangroves. The remaining mangrove shoreline is outside of the development area, will not be impacted by the proposed project, and will be enhanced through the removal of exotic vegetation and supplemental plantings.

Occurrence on Site

An abandoned bald eagle nest is located just north of the project site, shown on the attached listed species occurrence map. The original nest site was documented in the 1990's and was identified as location LE 50, located on the east side of US 41 near the boat ramp. An alternate nest identified

as LE-50a by the Florida Fish and Wildlife Conservation Commission (FFWCC) was later constructed on the west side of US 41 close to the Angler's Paradise project site. On-site monitoring has shown that the nest territory has been inactive for the past several years. Additionally, the Audubon eagle nest locator website (<http://https://cbop.audubon.org/conservation/about-eaglewatch-program>), also confirms that the nest territory was inactive in 2021. Based on past monitoring of this nest location by the author of this management plan, the LE 050a nest territory was active from 2004 through 2007 and was inactive in 2008. It was then active from 2009 through 2011 seasons. According to City of Bonita Springs staff, the nest was also active from 2011 to 2015 though it was not monitored by the project owners during that time frame. There was an alternate nest constructed (LE 50b) approximately 300 feet southwest of this nest site in 2015 or 2016 that was destroyed in 2017 by Hurricane Irma. The eagles rebuilt a nest near the original LE 50 location near the boat ramp on the east side of US 41 later in 2017 but it is not known whether that effort was successful or not. The nest sites adjacent to this property have been inactive since the 2017/18 nesting season. The remnants of the nest are located in a living slash pine tree (*Pinus elliottii*) on the parcel immediately north of the property. The tree is located in a forested, undeveloped parcel associated with the City park. No eagle use of the nest or the general area has been documented for the past 4 years. Great horned owls (*Bubo virginianus*) have been documented in the nest in 2018/19 and 2020/21.



PHOTO 1: Abandoned eagle nest (LE-50a) in pine tree (03/20/2020)

A previous Biological Opinion for the project allowed residential construction within 150 feet of the nest tree and stormwater features (berm and lake) to be within 50 feet. Any work within 660 feet of the nest tree was limited to outside of the eagle nesting season (work had to occur between May 15 and October 1). However, since the nest has been documented as abandoned for the past 5 years, assuming no nesting activity occurs during the 2022/23 nesting season, the USFWS will be petitioned to declare this nest abandoned. If USFWS agrees, then the development restrictions associated to proximity and construction timelines would no longer be in effect.



PHOTO 2: Eagle nest (LE-50a) remnants in pine tree (01/14/2022)

Biology and Habitat Requirements

The bald eagle is the largest raptor that breeds on the peninsula of Florida, with a wingspan of about seven feet. A body plumage is dark brown with the head and tail a distinctive white. Juveniles are brown-black and fully develop the white head and tail by the age of five or six.

Eagles typically nest close to water with their diet comprised mainly of fish but supplemented with a variety of vertebrates including birds and turtles. Nest locations must provide prey opportunities in the vicinity, good visibility and a clear flight path to foraging areas.

Nest laying begins in early fall and the cone shaped nests can be 6 feet across and 6-8 feet deep, lined with soft materials. Most commonly, living pine or cypress trees are chosen where some canopy remains above the nest. The ratio of water to land edge is one of the most important

considerations and so long as prey density does not diminish, habitat suitability of an area remains constant.

Egg laying peaks in early December and clutches usually consist of one to two eggs with incubation of approximately 35 days. The young fledge after 10-12 weeks although parental care may continue a further 4 to 6 weeks after this. Most of Florida's eagle pairs are year-round residents while the young are migratory.

In addition to the nesting tree, diurnal perch sites are an important part of the eagle's territory, when, during the non-nesting season, perching may take up 74-83% of the day (FWS). Selection is similarly based on how much prey is available in the vicinity and how well the bird can see it, thus perch sites are typically trees bordered by an open area such as river or lake banks.

As top predators, eagles are vulnerable to the buildup of contaminants in the food chain. Population size was severely affected by the use of the pesticide DDT (now banned), which reduced reproductive success by thinning eggshells. Lead and mercury poisoning are on-going concerns. While some eagle pairs have shown little tendency for disturbance when nesting close to residential or roadway projects, others have been prone to multiple disturbances that can lead ultimately to nest abandonment. Spatial and temporal isolation from the nest site and feeding areas are components of most eagle (and other species) management plans.

Given the general requirements for the ecological success of the eagle, an overview of how development on the project site will allow continued habitation is provided below.

Site Development Considerations and Species Management Protocol

The mobile home park on the property had mobile home residences within 150 feet of the active nest tree. Mowing and maintenance of the open area to the north of the mobile homes occurred within 50 feet of the nest tree. Loud noises from the commercial boat center and the shopping center occur daily and observations of the resident eagles from 2008 through 2011 indicated that they were not affected by these noises.

The current site plan calls for development of a mixed residential and commercial development. The commercial development will be placed along the US 41 right of way and adjacent to other similar activities on adjacent properties. Residential development will still be a minimum of 150 feet away from the nest tree. A proposed lake will be located closer than 150 feet to the nest, but construction will outside of the eagle nesting season unless the nest is declared abandoned following the 2022/23 season. Fencing and buffer plantings of slash pine will be placed along the perimeter of the property closest to the eagle nest tree to prevent encroachment by residents into the buffer area.

Development of the project site was reviewed by the USFWS and a Biological Opinion for the project was issued on August 3, 2006. Several conditions were placed upon the development at

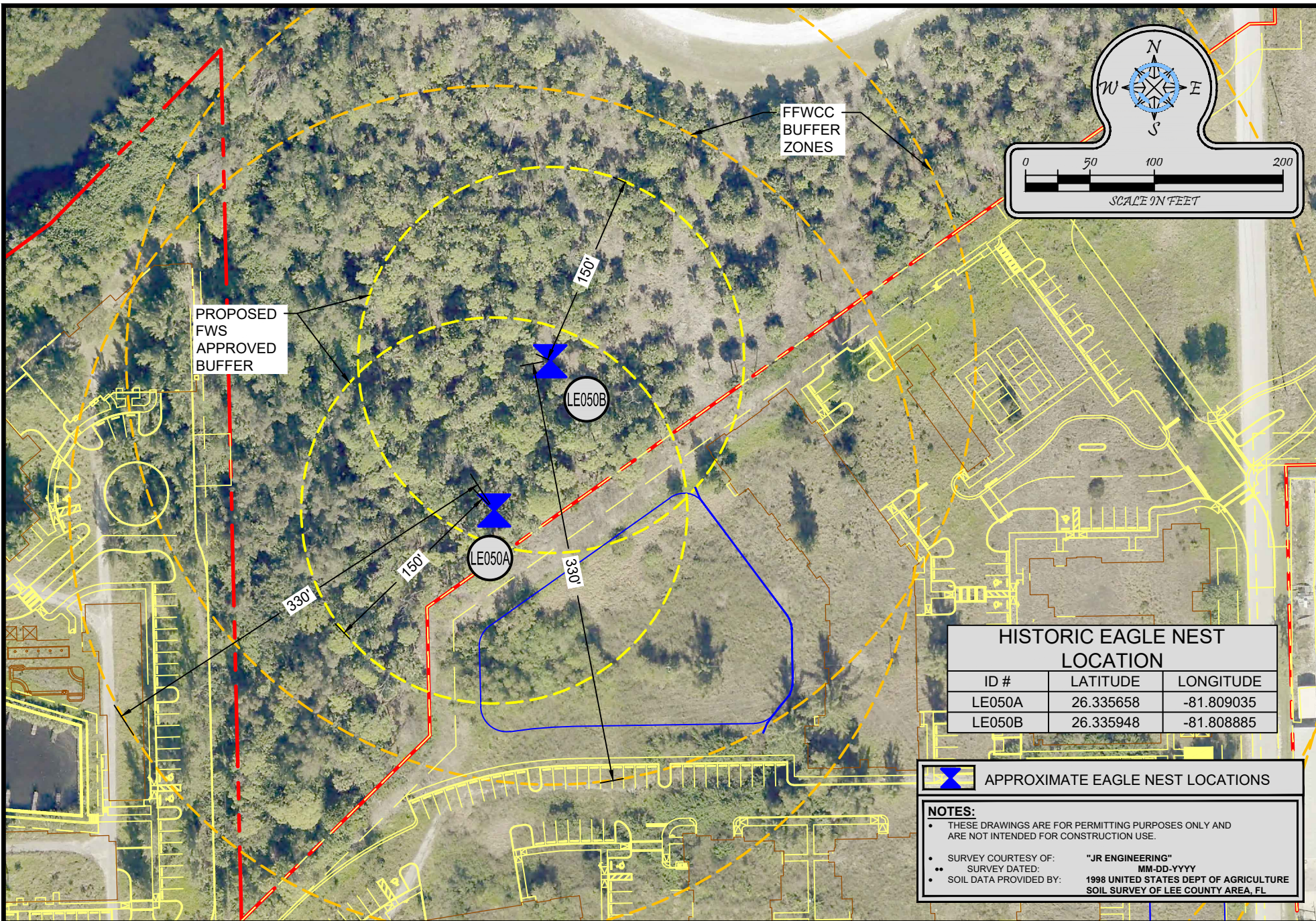
that time which are still being promulgated in the current plan, even though the Biological Opinion is no longer valid due to the delisting of the bald eagle. These conditions are as follows:

1. No multi-family or commercial building shall be constructed closer than 150 feet to the nest.
2. A stormwater lake will be constructed south and east of the nest. The lake must be constructed no closer than 40 feet from the nest and must be constructed during the non-nesting season (subsequent to fledging if the nest is active or after February 1st if there is no evidence of breeding activity at the nest).
3. Infrastructure work (such as clearing, grading, filling, excavation, utility work, or paving) within 330 feet of the nest tree will be initiated subsequent to fledging if the nest is active or after February 1st if there is no evidence of breeding activity. Site delineation and other preparatory work for infrastructure construction can be conducted at any time during the year as long as these activities do not exceed the historic levels of activity from the previously existing mobile home park. No excavation, clearing, or other activities that require the presence of dump trucks, excavators, or cranes may occur within 330 feet of the nest during nesting season (October 1 through fledging).
4. Infrastructure construction greater than 330 feet and less than 660 feet from the nest tree may be conducted at any time of the year. However, if the infrastructure construction within this area is conducted during the nesting season, then monitoring consistent with the FWS Bald Eagle Monitoring Guidelines shall be implemented to determine whether the eagles return to the site or are affected by the construction activities.
5. Vertical construction (such as framing, siding, windows, or roofing) for buildings within 330 feet of the nest shall be initiated during the non-nesting season. Vertical construction of all other structures can be initiated any time of the year. If vertical construction is conducted within 660 feet of the nest, during nesting season, then monitoring consistent with the FWS Bald Eagle Monitoring Guidelines shall be implemented to determine whether the eagles return to the site or are affected by the construction activities.
6. Interior and finish construction (such as electrical, dry wall, landscaping, interior and exterior painting, or driveways) may occur at any time of the year without implementing the monitoring protocols.
7. Remodeling, renovation, and maintenance of the boat docks and dredging of the boat basin can take place at any time of the year but if work in the boat basin is conducted during the nesting season then monitoring consistent with the FWS Bald Eagle Monitoring Guidelines shall be implemented to determine whether the eagles return to the site or are affected by the construction activities.
8. To minimize and compensate for potential adverse effects to bald eagles, the project contributed \$35,100 to the FFWCC. This contribution was to support and augment funds available to the FFWCC to undertake more aerial reconnaissance of bald eagle nests in southwest Florida, including Lee County.
9. In addition to the above conditions, the applicant must also initiate monitoring in accordance with the FWS Bald Eagle Monitoring Guidelines upon the onset of nesting

season for each year of construction to detect the presence of bald eagles on the project and, if present, to document any abnormal behavior that may be observed.

The current site plan is slightly different from the site plan which was originally reviewed and approved by the FWS and upon which the biological opinion was based though none of the differences would encroach further into the nest territory that was originally approved. This may all be moot if the nest remains inactive for another year. Coordination with FWS if the nest is abandoned would result in the construction timing restrictions being lifted or eliminated.

Following the verification that the nest is no longer active, the construction activities may be undertaken without any further monitoring requirement. Additionally, if the territory is determined to be abandoned, then conditions related to constructing further from the nest and working towards it would also no longer be relevant.



Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting

3584 Exchange Ave. Naples, FL 34104-3732

Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE **EAGLE MAP**

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV#	REV BY	DATE	CHK BY	CHANGED
DRAWN BY:	RMJ	1.	-	-	-	-
CREATED:	07-06-22	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	01 OF 01	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33 TOWNSHIP- 47S RANGE- 25E

ENVIRONMENTAL SUPPLEMENT

ANGLER'S PARADISE BONITA SPRINGS, FLORIDA 34134

JANUARY 2022

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1 INTRODUCTION

The Anglers Paradise of Bonita Springs, Inc. (Anglers Paradise) property consists of approximately 24.39 acres in southern Lee County. The project is located off of Windsor Road that intersects Bonita Beach Road just west of US 41. The site is bordered to the east by US 41, commercial Development, and a City Park. It is bound to the south by a commercial shopping center and development, to the north by the Imperial River, and to the west by Windsor Road and single-family residences. The project was previously permitted by the SFWMD (permit #36-07247-P) in 2010 and the USACE (permit # 2005-02842(IP-BEM)) in 2011 as a multi-family residential development. The site was originally a trailer park with approximately 108 residential units (see the historic aerials available on the Lee County Property Appraiser). Most of the trailers were removed in 2005-2006. The entire site was cleared in 2010, all of the building pads were removed, and the perimeter berm was installed but then construction halted. Both permits have since expired, and the applicant is now requesting re-authorization of the residential development on a slightly smaller construction footprint than was previously permitted.

When previously permitted, the site consisted of 0.18 acre of jurisdictional wetlands, 0.72 acre of surface waters, and 27.38 acres of uplands (note: The original permits cited 28.28 acres of property, however the project footprint currently being permitted does not include lands at the south end of the prior project). The site was cleared, scraped down,, and portions of the perimeter berm were constructed under the previous permits utilizing fill and clean debris from the site. No additional fill was brought into the property at that time. Most of the site is now open area that is periodically mowed and there is an access road to the City Park bisecting the property along the eastern edge. The scraping of the property associated with the past clearing and construction of portions of the perimeter berm without additional components of the surface water management system has created a bowl effect and resulted in previously delineated upland areas transitioning into wetland areas. The site now contains 10.55 acres of wetland, 0.76 acre of surface waters (boat basin and swale), and 13.08 acres of upland (see Sheet 2 of the attached Exhibits).

The proposed development includes the residential construction, restoration and enhancement of the existing boat basin, and enhancement of the shoreline along the river. The restoration of the basin will impact approximately 0.01 acres of mangroves at the mouth of the basin which have established behind failed portions of the existing seawall. There is no way to repair the seawall without impacting these few mangroves. The remaining mangrove shoreline is outside of the development area, will not be impacted by the proposed project, and will be enhanced through the removal of exotic vegetation and supplemental plantings.

This document provides information concerning the proposed Angler's Paradise project site as it relates to natural resources and environmental issues. It will be submitted to the South Florida Water Management District and U.S. Army Corps of Engineers in support of an Environmental Resource Permit and federal 404 permit request made by the applicant. It will also be submitted to the City of Bonita Springs in support of a local development order.

2 EXISTING CONDITIONS PRE-DEVELOPMENT

2.1 FLUCFCS CODES AND HABITAT DESCRIPTIONS

The existing habitat types (based on FLUCFCS codes) are shown in Table 1 below and Exhibit 2 (FLUCFCS Map).

Of the total 24.39 acres contained within the Angler's Cove property boundary, approximately 10.55 acres is wetland, and 13.08 acres is upland, the remaining 0.76 acres are classified as surface waters. The majority of the previously developed portion of the site, with the exception of the forested areas and mangrove areas, has been cleared and is maintained through periodic mowing.

Table 1: FLUCFCS code and description of community type found within the project site

FLUCCS	DESCRIPTION	Upland Acres	Wetland / OSW Acres
190	Open Urban Land	10.12	
190H	Open Urban Land (Hydric)		10.15
414E3	Pine-Mesic Oak (50%-75% Exotics)	1.30	
510	Streams and Waterways		0.16
612 E2	Mangrove Swamp (25%-50% Exotics)		0.14
619	Exotic Wetland Hardwoods (90% Exotics)		0.15
631	Wetland Scrub		0.11
743	Spoil Areas	0.79	
814	Roadways	0.87	
1841	Waterway		0.60
	Sub Totals	13.08	11.31
	Total	24.39	

There are no rare or exceptional vegetation associations present on the project lands. The majority of wetlands present are the result of anthropogenic activities as they were created when the previous clearing and scraping activities were conducted on the property. The only natural wetlands are the mangrove fringe along the shoreline which will be preserved as a component of this project.

2.2 VEGETATION ASSOCIATIONS

Table 2: A list of plant species observed within each habitat type is found below.

<u>414 – Pine – Mesic Oak, 1.30 acres</u>				
	Laurel oak	<i>Quercus laurifolia</i>	C	Dominant
	Cabbage palm	<i>Sabal palmetto</i>	C	Common
	Slash pine	<i>Pinus elliottii</i>	C	Common

	Brazilian pepper	<i>Schinus terebinthifolia</i>	C, M & G	Common
	Earleaf acacia	<i>Acacia auriculiformis</i>	C	Dominant
	Myrsine	<i>Myrsine guianensis</i>	M & G	Common
	Wax myrtle	<i>Myrica cerifera</i>	M & G	Occasional
	Caesar weed	<i>Urena lobata</i>	G	Occasional
	Saw palmetto	<i>Serenoa repens</i>	G	Occasional
	Greenbriar	<i>Smilax spp.</i>	V	Occasional
	Grapevine	<i>Vitis rotundifolia</i>	V	Occasional
<u>612 - Mangrove Swamps (25-50% Exotics), 0.14 acres</u>				
	Red Mangrove	<i>Rhizophora mangle</i>	C	Dominant
	Brazilian Pepper	<i>Schinus terebinthifolia</i>	C, M, & G	Common
	Coin vine	<i>Dalbergia ecastaphyllum</i>	M	Common
<u>619 - Exotic Wetland Hardwood (90% Exotics), 0.15 acres</u>				
	Brazilian Pepper	<i>Schinus terebinthifolia</i>	C, M, & G	Dominant
	Red Mangrove	<i>Rhizophora mangle</i>	C	Occasional
	Coin vine	<i>Dalbergia ecastaphyllum</i>	M	Common
<u>631 - Wetland Scrub, 0.11 acres</u>				
	Carolina willow	<i>Salix caroliniana</i>	M	Occasional
	Peruvian willow	<i>Ludwigia peruviana</i>	M	Occasional
	Water pennywort	<i>Hydrocotyle spp.</i>	G	Occasional
	Wax myrtle	<i>Myrica cerifera</i>	M	Occasional
<u>190 - Open Land, 10.12 acres</u>				
	Live oak	<i>Quercus virginiana</i>	C	Occasional
	Australian Pine	<i>Casuarina equisetifolia</i>	C	Dominant
	Cabbage palm	<i>Sabal Palmetto</i>	C & M	Occasional
	Downy rose myrtle	<i>Rhodomyrtus tomentosa</i>	M	Occasional
	Rusty lyonia	<i>Lyonia ferruginea</i>	M	Occasional
	Guineagrass	<i>Panicum maximum</i>	G	Dominant
	Caesar weed	<i>Urena lobata</i>	G	Occasional
	Cogon grass	<i>Imperata cylindrica</i>	G	Common
	Elliot's lovegrass	<i>Eragrostis elliottii</i>	G	Common
	Whitehead broom	<i>Spermacoce verticillate</i>	C	Common
	Florida pusley	<i>Richardia scabra</i>	G	Dominant
	Grape vine	<i>Vitis rotundifolia</i>	V	Common

<u>190H – Open Urban Land Hydric, 10.15 acres</u>			
Rush fuirena	<i>Fuirena scirpoidea</i>	G	Dominant
Coinwort	<i>Centella asiatica</i>	G	Occasional
Water pennywort	<i>Hydrocotyle spp</i>	G	Occasional
Saltbush	<i>Baccharis halimifolia</i>	G	Rare
Wedelia	<i>Wedelia trilobata</i>	G	Dominant
White-top sedge	<i>Rhynchospora nervosa</i>	G	Common
Cattail	<i>Typha latifolia</i>	G	Common
Dog fennel	<i>Eupatorium capillifolium</i>	G	Common
Torpedo grass	<i>Panicum repens</i>	G	Dominant
Nut sedge	<i>Cyperus haspan</i>	G	Occasional

C = Canopy M = Mid-story G = Groundcover V = Vine
OBL = Obligate Wetland FACW = Facultative Wetland FAC = Facultative
FACU = Facultative Upland UPL = Upland

2.3 WETLANDS & OTHER SURFACE WATERS

Qualified Turrell, Hall & Associates, Inc. (THA) environmental staff inspected the project site for the purpose of delineating wetlands and other surface waters. The wetland delineation methodologies and criteria set forth by the state (in Chapter 62-340, FAC, Delineation of the Landward Extent of Wetlands and Surface Waters) and the US Army Corps of Engineers (in the 1987 Corps of Engineers Wetlands Delineation Manual) were followed in determining whether an area was considered as a wetland or other surface water and in delineating the limits (boundaries) of potential jurisdictional wetlands and other surface waters.

The majority of the project site was cleared and altered as part of the previous permitting. The constructed berm on the perimeter of the site coupled with poor drainage has caused an anthropogenically induced wetland throughout the eastern portion of the site. This area has been designated in the FLUCFCS chart as 190 Open Urban Land Hydric. The area is still periodically mown and maintained per the City of Bonita Springs requirements. It is anticipated that these areas will be jurisdictional to the SFWMD but not to the USACE due to the created and isolated status of the wet areas.

The applicant has ownership of the submerged lands within the existing boat basin, and this has been verified by FDEP State Lands during previous permitting efforts in 2007 and 2016. The State does claim ownership of the bottomlands waterward of the basin mouth within the river. The Imperial River is designated as an Outstanding Florida Waterway (OFW) by the state and appropriate BMPs will be required on the site to ensure no adverse impacts to the OFW will occur as a result of the project.

2.3.1 *Wetland Seasonal High Water Table & Hydroperiod*

The water table within the boat basin and mangrove shoreline is an extension of the adjacent river and tidal fluctuations within it. It is apparent that water is being held between the park road and US 41 and that this water is connected to the river through the adjacent park property. During site visits it was estimated that water levels within this area may have gotten as high as 6 inches above the ground surface. Furthermore, the lowering of the site in conjunction with the berms constructed during previous development work have caused unnatural conditions on the eastern portion of the site leading to the development of wetland characteristics due to water retention within the site boundaries.

2.3.2 *Jurisdictional Status of Wetlands and Other Surface Waters*

The wetland lines established are assumed to be jurisdictional with the State permitting agency per their delineation guidelines. However, these wetlands may not be jurisdictional with the Federal permitting agency due to wetland isolation within the berm and remaining roadways. The wetland delineation is shown on the attached FLUCFCS exhibits. It is also acknowledged that the surface waters within the basin and adjacent river are also jurisdictional to both the State and Federal agencies.

2.4 LISTED PLANT AND ANIMAL SPECIES

A survey for listed animal and plant species has been conducted within the project area by THA biologists. This threatened and endangered species survey and its results are discussed in the attached Appendix A. The Threatened & Endangered Species report describes the approximate locations where listed animal species were observed on and near the project area during the course of the referenced survey. During the survey events white ibis (*Eudocimus albus*), snowy egret (*Egretta thula*), little blue heron (*Egretta caerulea*) and gopher tortoises (*Gopherus polyphemus*) were observed. Several gopher tortoises had also been relocated as part of the previous permitted activities before the clearing occurred. Active burrows were located during the most recent wildlife surveys so permitting with the Fish and Wildlife Conservation Commission (FWC) will be required to relocate them prior to construction commencement. There is also an eagle nest located on the adjacent City Park property to the north that was addressed with FWS through a Biological Opinion when the property was last permitted. This nest has not been active since the 2016/17 nesting season though eagles have still been observed within the areas and may still be utilizing the territory for nesting though in another off-site tree. Since the eagle is no longer protected under the Endangered Species Act but instead under the Bald and Golden Eagle Protection Act, additional permitting through FWS may be required. If the nest remains inactive during the upcoming 2021/22 nesting season then it will have been inactive for 5 years and can be determined to be abandoned.

A few listed animal species, in addition to those documented, have the potential to occur in certain habitats present on-site. These species include but are not limited to the eastern indigo snake (*Drymarchon couperi*), tricolor heron (*Egretta tricolor*), least tern (*Sterna antillarum*), wood stork (*Mycteria americana*), and roseate spoonbill (*Platalea ajaja*). The probability of these animals

utilizing suitable habitats ranges from high to low depending on the particular species. It is improbable that any of these species currently reside or nest on-site.

Due to the prior land uses, the surrounding development and roadways, and the current maintenance activities, it is apparent that this site offers only minimal value to local transient wildlife (mainly birds). The surrounding development and roadways have isolated this property and made travel to it by terrestrial wildlife difficult.

2.5 HISTORICAL/ ARCHAEOLOGICAL RESOURCES

The Florida Master Site File (MSF) is a database of the known historic and archaeological sites in the state of Florida. The MSF office was contacted, and the response back indicated that there is one known archaeological feature within the same Section as the property, but it is not on or adjacent to the project site. This site has been previously permitted and there were no historical or archaeological resources located on-site during past clearing activities. If a suspected archaeological or historical artifact is discovered during the course of site development activities (construction, clearing, etc.), the development activities at the specific site will be immediately halted and the appropriate agency notified. Development will be suspended for a sufficient length of time to enable the County or a designated consultant to assess the find and determine the proper course of action.

2.6 SOILS

Based on the National Resource Conservation Service (NRCS) "Soil Survey of Collier County Area, Florida" (NRCS, 1998) there are three (3) different soil types (soil map units) present on the project lands, however these soils have been disturbed by previous activities. The attached exhibit provides a soils map for the project area as derived from the NRCS mapping. The following sub-sections provide a brief description of each soil map unit identified on the project lands. Information is provided about the soil's landscape position (i.e. it's typical location in the landscape on a county-wide basis), the soil's profile (i.e. textural composition and thickness or depth range of the layers or horizons commonly present in the soil), and the soil's drainage and hydrologic characteristics. The soils occurring on project lands are as follows:

2.6.1 10 – Pompano Fine Sand

This is a heavy level, poorly drained soil usually associated with sloughs. Slopes are smooth to concave and range from 0 to 1 percent.

Typically, the surface layer is dark gray fine sand about 4 inches thick. The underlying layers are light gray, very pale brown, or white fine sand and extend to a depth of 80 inches or more.

In most years, under natural conditions, the water table is at a depth of less than 10 inches for 2 to 4 months and at a depth of 10 to 40 inches for about 6 months. It recedes to a depth of more than 40 inches for about 3 months. During periods of high rainfall, the soil is covered by slowly

moving water for periods of about 7 to 30 days or more. The available water capacity is very low. Natural fertility is low. Permeability is rapid.

Natural vegetation consists of pineland threeawn, scattered South Florida slash pine, bluestem, maidencane, and scattered saw palmetto.

This Pompano soil is in capability subclass IVw.

2.6.2 28 – *Immokalee Fine Sand*

This is a nearly level, poorly drained soil associated with flatwoods areas. Slopes are smooth to convex and range from 0 to 2 percent.

Typically, the surface layer is black sand about 4 inches thick. The subsurface layer is dark gray sand in the upper 5 inches and light gray sand in the lower 27 inches. The subsoil is sand to a depth of 69 inches. The upper 14 inches is black and firm, the next 5 inches is dark reddish brown, and the lower 14 inches is dark yellowish brown. The substratum is very pale brown sand to a depth of 80 inches or more.

In most years, under natural conditions, the water table is within 10 inches of the surface for 1 to 3 months and 10 to 40 inches below the surface for 2 to 6 months. It recedes to a depth of more than 40 inches during extended dry periods. The available water capacity is medium in the subsoil and very low in the surface and subsurface layers.

Natural fertility is low. Permeability is rapid in the surface and subsurface layers and moderate or moderately rapid in the subsoil. Natural vegetation consists of saw palmetto, fetterbush, pineland threeawn, and South Florida slash pine.

This Immokalee soil is in capability subclass IVw.

2.6.3 59 – *Urban Land*

Urban land consists of areas that are more than 85 percent covered with parking lots, airports, shopping centers, large buildings, streets, and sidewalks where the natural soil cannot be observed. Unoccupied areas are mostly lawns, vacant lots, and playgrounds. Individual areas are usually polyhedral in shape and range from about 10 to 320 acres. It was applied to this site when due to the trailer park that was located here.

Included in mapping are small areas where less than 12 inches of fill material has been spread over the surface. Also included are small areas of Smyrna, Myakka, Immokalee, Hallandale, and Boca soils. Included soils make up about 15 percent-of any mapped area.

This map unit has not been assigned to a capability subclass.

2.7 SOIL SAMPLES

Several soil plugs were taken throughout the site. Nearly all of the soil plugs from the north and eastern portions of the site, with the exception of the spoil areas, contained evidence of hydrology. Many of the soil plugs contained stripping within the first 6" and all of them contained organic matter. Even though the soils on this site are very disturbed, the construction of the berm and retention of water on site have caused the soils within this area to take on hydric characteristics over the past 11 years.

3 PROPOSED CONDITIONS (POST-DEVELOPMENT)

3.1 PROPOSED PROJECT

The proposed project will eventually impact all of the disturbed wetlands located on the site. The area between the park access road and US 41, is designated as conceptual use only at this time, but future development will likely impact this area as well as the remainder of the site. These wetlands have been degraded due to past permitted clearing and scraping activities as well as by the alteration of the hydrology on-site. One small area of mangroves (less than 0.01 acre) will be impacted due to replacement of the seawall. No mitigation should be required for the mangrove impacts as they are there as a result of the failure of the wall and the repair/replacement of the wall should be an exempt activity. The remaining mangroves along the shoreline will be protected and enhanced. The enclosed exhibits (Sheet 5) illustrate the wetlands that will be impacted by development. In addition to the wetland impacts, most of the uplands on the project site will also be impacted.

3.2 PROJECT SUMMARY

The 24.39-acre site consists of 10.55 acres of wetlands (10.26 acres of which are due to prior development activity), 0.76 acre of open water (a 0.56 acre boat basin, 0.04 acre open water, and 0.16 acre ditch), and 13.08 acres of uplands. All vegetated areas on site have been impacted either by nuisance and exotic vegetation, or as a result of past disturbances, clearing, and surrounding development.

There are no natural wetlands on the property except for the mangrove fringe along the river. The entire site was formerly a trailer park which was cleared and scraped down as part of an earlier development project. The perimeter berm for the stormwater system was also installed around the project which blocked all positive flow from the project area, isolating the scraped down areas and resulting in wetland formation within the "bowl" areas. The project was abandoned after it was scraped down so the lowered elevations sat idle for the past 10 years and have in that time converted to wetlands. The entire site, including the wetland areas are subject to the lot maintenance requirements of the city and are periodically mown to keep the vegetation height down.

The proposed project is a residential multi-family development, including the restoration and repair of an existing boat basin. There is also approximately 1.6 acres of wetlands adjacent to US 41 that will be retained but will be subject to commercial development sometime in the future. The proposed project will impact 10.26 acres of isolated, disturbed hydric wetlands, during construction activities (See Sheet 5 of the environmental figures). The mangrove shoreline is outside of the development footprint. It will not be impacted as a result of this development and will be enhanced through the removal of invasive vegetation and supplemental plantings.

3.3 IMPACTS TO WETLANDS

3.3.1 *Direct; Permanent Impacts*

Development of the proposed project cannot be done without impacting the wetlands. The past clearing and scraping on the site have resulted in the establishment of isolated wetlands throughout the property. The project will result in direct, permanent impacts to a total of 10.26 acres of wetlands. As used herein, the term "direct impacts" refers to actions that will result in the complete elimination of wetland areas (i.e., dredging and filling). The wetlands proposed to be impacted are all degraded by past clearing activities and the construction of a berm has resulted in wetland isolation. The wetlands are also subjected to current mowing and maintenance activities.

3.3.2 *Temporary Impacts*

No temporary impacts are expected with this development. Prior to construction commencement all construction areas will be enclosed with siltation-prevention devices, which will remain in place until the construction is completed. Turbidity barriers will be put in place across the mouth of the marina basin. All seawall replacement, maintenance dredging, and dock construction will take place within the turbidity barriers. Since the Imperial River is and OFW, turbidity monitoring will also be required to prevent downstream impacts associated with the boat basin work.

3.3.3 *Secondary Impacts to Wetlands and Water Resources*

The proposed layout of the project's development features will directly impact 10.26 acres of on-site wetlands. All of the wetland impacts are contained within the site as the project will provide buffers of sufficient size to avoid secondary impacts to any adjacent wetlands. Adjacent properties are for the most part already developed with roadways, single-family residence, commercial developments, and a city park, therefore no secondary impacts to off-site wetlands are expected. This site was also previously an active mobile home park so and secondary impacts would have already occurred as a result of those prior development activities.

3.3.4 *Cumulative Impacts to Wetlands and Water Resources*

The proposed project is jurisdictional to the state and will be appropriately mitigated for under the South Florida Water Management District permit. Mitigation will be purchased from Corkscrew Regional Mitigation Bank whose service area encompasses the project site and which is located within the same Estero Bay drainage basin so that no cumulative impacts are anticipated.

3.4 MINIMIZATION OF IMPACTS

As outlined in Section 10.2.1.2 of the ERP Applicant's Handbook (vol 1), "The Agency will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when: a. The ecological value of the functions provided by the area of wetland or other surface water to be adversely affected is low, based on a site-specific analysis using the factors in section 10.2.2.3, below, and the proposed mitigation will provide greater long term ecological value than the area of wetland or other surface water to be adversely affected, or b. The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected."

As stated above, there are no natural wetlands on the property. All of the wetlands present on this site are the result of past disturbances when the trailer park was cleared and scraped down as part of an earlier development project. These wetlands are of very low quality/value for several reasons as outlined below.

- a. They are hydrologically isolated from other upstream or downstream waters. The perimeter berm and remaining roadway within the project boundary serve to create a series of isolated cells with no connectivity.
- b. They are located on a site which has been disturbed for several decades. First with the trailer park, then due to the elimination of the trailer park. The site is surrounded by roadways and development on three sides and is subject to high development pressure due to its urban location. Additionally, the site was permitted for residential development previously.
- c. There is no utilization of the project site by wetland dependent species. Wildlife surveys of the property have been undertaken several times over the past 15 years and no nesting or denning on the site has been documented. Only transient foraging use by a few wading birds has been described (See the submitted Listed Species Survey).
- d. The property is looked at as a vacant developed property and is required by local (City of Bonita) regulations to be maintained via mowing to keep the groundcover vegetation below certain heights. The property is periodically mown in accordance with these requirements and so is still subject to ongoing disturbance.

The selection of this property for the proposed project is actually a minimization of potential impacts associated with the project. The project is to construct a residential community with associated water access and vessel moorage. This property is a previously disturbed site which had been disturbed by residential uses, and already has an existing boat basin that can accommodate vessel mooring appropriate to the adjacent waterway. Any other property chosen for this project with waterfront access, would require additional impacts to the waterway itself, new dock within the waterway, and impacts to shoreline vegetation. This project impacts no shoreline vegetation, utilizes an existing boat basin so no docks are required in the waterway itself, and impacts only land that has impacted in the past.

The property has a development plan which was previously reviewed and approved by the SFWMD. This proposal is to re-authorize that previously approved project. Wetland impacts

cannot be reduced or eliminated to the extent of wetland which has established on the property as a result of the previous abandoned development activities, as well as the reduction in the overall project size due to the transfer of a portion of the property to the City of Bonita for a planned roadway extension. The loss of property due this transfer and the required development activity needed to result in a viable project require the extent of impacts to the man-made wetlands that are proposed with this project. No additional lands are proposed to be developed other than what was previously approved.

3.5 PROJECT IMPACTS TO LISTED SPECIES

A survey for listed animal and plant species was originally conducted on the project site by THA biologists in March 2016. This survey was updated through additional field visits and inspections from March through September 2020 and then again from September through November 2021. The results of this survey effort were used to update previous surveying efforts conducted as part of the previous permitting. The listed animals associated with this project site as observed directly or indirectly by THA included the gopher tortoise, white ibis, snowy egret, and little blue heron. Five active burrows were located, as well as two older abandoned burrows. Several tortoises were relocated off of the project site as part of the past permitted development activities and it appears that a couple of more tortoises have moved onto the project site in the past 10 years. Updated surveys will be conducted periodically prior to any future construction to ensure there is no new tortoise utilization on-site. Coordination and permitting with FWC will be undertaken to relocate the tortoises out of the development footprint prior to construction.

There is an eagle's nest within close proximity of the project site. Nest number LE050 is located immediately north of the project boundary. It appears that this nest was active from at least the 2009/2010 season through the 2016/17 seasons. The nest tree was blown down and the eagles tried to nest in a different tree for the 2017/18 season, but the nest was taken over by owls. No information is available for the 2018/19 season. No activity was noted at the nest during the 2019/20 or 2020/21 seasons. It appears that great horned owls occupied the abandoned nest. Only remnants of the nest remain, and no reconstruction work has been observed as of the writing of this supplement. Considerations to minimize impacts on this nest were included in previous permitting and will be carried forward under this new permit proposal. Should no nesting occur during the 2021/22 nesting season, the site will be declared as abandoned and development restrictions associated with the Eagle Management Plan may be relaxed.

Several listed animal species, in addition to those documented, have the potential to occur in certain habitats present on-site. These species include but are not limited to the eastern indigo snake (*Drymarchon couperi*), tricolor heron (*Egretta tricolor*), wood stork (*Mycteria americana*), roseate spoonbill (*Platalea ajaja*), and Florida bonneted bat (*Eumops floridanus*). The probability of these animals utilizing suitable habitats ranges from high to low depending on the particular species. It is improbable that any of these species currently reside or nest on-site. Once under construction, the site could become attractive to least terns (*Sterna antillarum*), especially if the site is cleared again and then left fallow with no activity.

The following subsections provide an assessment of the proposed project's potential impacts to various listed animal species. The species addressed include those observed on or in close proximity to the subject property as well as certain species that could potentially occur on the Angler's Paradise site or on nearby off-site parcels.

Wood Storks (*Mycteria americana*)

No wood stork nests, rookeries, or roosting sites have been found on the subject property. The closest documented wood stork colony is located approximately 12 miles to the east at Corkscrew Swamp Sanctuary. The site is not appropriate for foraging as the only open water areas are within the boat basin and are too deep. Some foraging may occur along the river shoreline, but this has not been observed at this site. There is a drainage canal that runs along Windsor Road on the west side of the property that could attract some foraging though this has not been observed.

The proposed project will impact 10.26 acres of wetlands on-site, however these areas are of very low value foraging habitat for the wood stork. The water levels are too shallow and the forage base not sufficient to provide high quality foraging habitat. The foraging opportunities provided can vary significantly during a given year due to a wide array of factors that include but are not limited to water levels present; variable abundance of prey species; and available access of prey species to wetland areas. The proposed lake littoral areas may provide some suitable wood stork foraging habitats, though this would likely be more like the existing foraging habitat along the river shoreline.

Various Listed Wading Birds

Snowy egrets (*Egretta thula*), little blue herons (*Egretta caerulea*), and white ibis (*Eudocimus alba*) have been in the wetlands on-site and within the vicinity of the site. No nests of these species have been observed within the project area. In addition to the observed species, other listed wading birds that could frequent appropriate habitats within the project area include roseate spoonbills (*Platalea ajaja*), tricolor herons (*Egretta tricolor*), and limpkins (*Aramus guarauna*).

Development of the project area will result in the loss of some on-site wetlands that could potentially be utilized by the wading birds mentioned. However, the fish, snail and other aquatic invertebrates that would be foraged on the site have not been observed, likely due to the shallow, flashy hydrology and isolation from refugia areas that would help to promote forage fish proliferation within the site. The proposed lake littoral areas may provide some suitable foraging habitat, though this would likely be more like the existing foraging habitat along the river shoreline.

Bald Eagle (*Haliaeetus leucocephalus*)

There are no suitable nesting or roosting trees located on-site, however the location of the historic eagle nest is immediately adjacent to the project site. Nest number LE050 was located approximately 60 feet north of the property boundary. It was determined in March of 2021 that Great horned owls that had previously taken over the abandoned nest were still using it. FWS had previously approved a 150-foot buffer zone to be established around the nest tree. The eagle

is no longer protected under the Endangered Species Act but instead under the Bald and Golden Eagle Protection Act. It is anticipated that additional coordination will be required with FWS to declare the nest site as abandoned if no nesting activity is documented during the 2021/22 nesting season.

Gopher Tortoise (*Gopherus polyphemus*)

As noted earlier in this report, tortoises that were present during the past permitting and construction activities were relocated to an off-site conservation area. During the most recent survey effort four potentially occupied and five abandoned gopher tortoise burrows were observed within the proposed development footprint. Surveys will need to be updated, and proper permits from the Florida Fish and Wildlife Commission obtained to relocate the tortoises prior to any construction.

Eastern Indigo Snake (*Drymarchon corais couperi*)

No eastern indigo snakes have been observed on-site, and the majority of the project area does not provide suitable habitat for indigo snakes. Considering their elusive nature, large home range, and the wide array of habitats they may utilize, there is potential that indigo snakes could occasionally frequent portions of the project area though the intervening roads and developments make this possibility unlikely. The contractors on-site will be made aware of and will be required to follow the Standard Protection Measures for the Eastern Indigo Snake developed by the USFWS.

Florida Bonneted Bat (*Eumops floridanus*)

The Florida bonneted bat utilizes habitats such as hardwoods and pinelands for foraging. A portion of the project area consists of a small area of pine-mesic oak habitat that may be suitable for Florida bonneted bat foraging once the exotic vegetation currently present has been removed. No cavities were located within the proposed development areas that would be suitable for bonneted bat roosting. No adverse effect to the bonneted bat is expected.

Big Cypress Fox Squirrel (*Sciurus niger avicennia*)

The Big Cypress Fox Squirrel has not been observed on-site; however, they have been known to utilize habitats such as cypress, cypress-pine-cabbage palm, and pine flatwoods. Additionally, they prefer suburban habitats including golf courses, and residential areas. The area surrounding the project site is primarily commercial and residential development. There are no suitable preferred habitats on-site either so the likelihood of fox squirrels being present on the site are minimal. Little to no effect to the Big Cypress fox squirrel is expected.

West Indian Manatee (*Trichechus manatus*)

The West Indian manatee was listed under the Endangered Species Act (ESA) as threatened throughout its range on March 11, 1967. Critical habitat has been designated for the manatee and

includes all U.S. territorial waters adjoining the coast and islands of Lee County. The Imperial River is included in this critical habitat designation.

Lee County finalized a Manatee Protection Plan (MPP) in June 2004, the purpose of which was to reduce boat related manatee mortality, protect manatee habitat, promote boating safety, and increase public awareness of the need to protect manatees and their environment, specifically in Lee County. The plan uses a scoring system to determine if a site is appropriate for boat slips with respect to potential manatee impacts.

It appears as though this project is actually exempt from the marine facilities siting element of the Lee County MPP which states that "Existing projects that propose reconfigurations where there is no net addition of slips (or there is a proposed reduction of slips), and where there are no adverse impacts to sea grasses, shall be exempted from the MFSE screening process. In these instances, standard manatee construction conditions and manatee education should be incorporated into any authorizations and followed by the permittee." Since the proposed project does not impact seagrasses and results in a reduction of slips, the project should be exempt from the MPP review. However, the site has been evaluated based on the siting criteria to give added assurances that the project is consistent with the MPP and will not adversely impact manatees. The results of the siting criteria evaluation are presented below.

Step 1a. The project will not affect seagrasses and so is not prohibited. A growing season survey was conducted to verify there were not seagrasses present within or adjacent to the boat basin.

Step 1b. Water depths of at least -4.0 feet MLW are present, so the project is not prohibited. Reconfiguration of the basin will restore water depths that have silted in over time.

Step 2. In the last ten years (as of 01/01/2020), there have been 20 watercraft related manatee mortalities within 5 miles of the project site, which includes both Lee and Collier County data. There have been a total of 167 watercraft related deaths within Lee and Collier Counties within the same time frame. $20/167 = 0.12$ so project receives 6 points for this step.

Step 3. Manatee abundance is generally in the medium to high ranges depending on the time of year. In order to be conservative, the greater than 25 average was used. Project receives 9 points for this step.

Step 4. The project is not close to any warm water refuges and so receives 0 points for this step.

Step 5. The project is located in a year round speed zone and is not located within a warm water refuge so receives -2 points for this step.

Step 6. The project is a modification of an existing facility and so receives -1 point for this step.

Step 7. The project is about 4 miles from a Gulf Pass and so receives 0 points for this step.

Step 8. Adding up all the points results in a total of 12 points for the site which indicates a conditional ranking under the MPP siting criteria.

Step 9. The project is not located within an Area of Special Concern.

Step 10. As a conditional facility not within an area of special concern, the project would be allowed up to 5 slips per 100 feet of shoreline. With about 850 feet of shoreline around the basin, the project (if new) would be allowed up to 42 slips.

The project warrants a conditional ranking even if it were not exempt from the MPP review. The project will result in a reduction of slips on the site (from 54 to 31) as well as the previous removal of an existing boat ramp. The speed zones in place between the project site and the Gulf will require boaters to conduct vessels in a safe manner with respect to manatees. This basin is sized for smaller vessels with shallower drafts and so will not cause water quality problems through prop dredging or turbidity. Expected boat drafts will not exceed three feet in depth which will provide at least one foot of clearance at MLW. The project will comply with standard manatee construction conditions and will also provide manatee educational material to all slip users. Educational material will include signage at the docks, manatee and waterway information, and seagrass location information. The project is not expected to adversely affect the manatee.

3.6 PROJECT IMPACTS TO HISTORICAL/ ARCHAEOLOGICAL RESOURCES

There are no historical or archaeological resources located within the vicinity of the project.

4 WETLAND MITIGATION PROGRAM

Based on the previous permits issued for this property, there was no mitigation requirement as the only impacts were to mangroves in conjunction with restoration of the basin seawall. Due to the creation of wetland areas as a result of the grading and scraping that occurred under the previous permits, the current plan will impact 10.26 acres of these man-made wetlands. On-site mitigation for wetland impacts is limited to the restoration and enhancement of 0.28 acres of forested brackish wetlands and associated upland buffer along the Imperial River. The change in wetland area associated with the clearing and fill removal from previous actions results in additional wetland impacts than originally permitted and a companion increase in the mitigation requirement. A UMAM analysis was conducted to determine the mitigation requirement. Mitigation credits will be purchased from an approved wetland mitigation bank having a service area which overlays the project site. See the attached Mitigation Plan for additional details.

4.1 MITIGATION SUMMARY

Pre and post development UMAM analysis were conducted to quantify the pre-existing functional value of the wetlands to be impacted as well as the mitigation required to offset those impacts. The qualitative and quantitative data sheets are attached. The proposed development will impact 10.26 acres of disturbed wetlands. There are about 1.6 acres between the park access road and US 41 which will not be immediately impacted with the proposed residential development, but which are included in the impact and mitigation calculations due to further isolation and the acknowledgement that these remaining areas will be subject to future commercial development. The development footprint is essentially the same as what was previously permitted but what were upland areas originally are now wetland, so mitigation is being proposed that was not required under the past permitting. The functional assessment depicting the mitigation credits and deficits associated with these impacts is attached.

Due to the impacted and hydrologically isolated condition of the wetland areas, the pre-construction (existing) values are low (0.27). The impact UMAM calculations take into consideration the impacts that will occur from dredging and filling as well as isolation. The total functional loss from the unavoidable impacts is 2.77 functional units.

Enhancement activities along the River will create approximately 0.02 units of wetland functional lift so the overall compensatory mitigation requirement for the project will be 2.75 credits purchased from the Corkscrew Mitigation Bank.

5 TURBIDITY MANAGEMENT PROGRAM

The following protocol will be implemented to monitor and manage potential turbidity concerns during the proposed dredging and boat basin restoration and repair activities for the Angler's Paradise project.

All in water activities will be completely contained within weighted turbidity curtains to prevent turbidity degradation within the adjacent waters. The curtains will be installed across the mouth of the basin and managed by the marine contractor. Curtain management will include daily inspections and repair of any damaged sections.

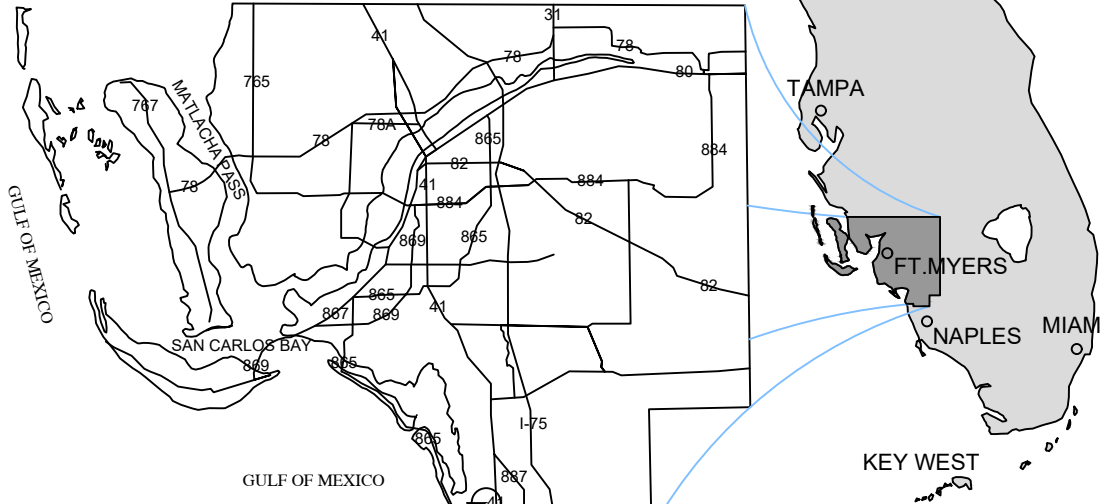
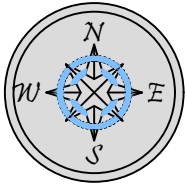
Every effort will be made to contain all turbidity within the basin. This will eliminate the need for a mixing zone. Turbidity sampling will be conducted upstream of the basin entrance, approximately 200 feet from the proposed work area to establish the background parameters for the site. Compliance monitoring samples will be collected 200 feet downstream of the basin entrance to ensure that water quality degradation does not occur. An **HF scientific/ Micro TPI** or equivalent turbidity meter will be utilized for taking turbidity samples.

Since the construction activities are being performed adjacent to an OFW the compliance samples cannot exceed the background sample in terms of NTUs. If the compliance sample does exceed 0 NTUs above background all construction activities will cease and the SFWMD and USACE will be notified. Construction activities may recommence only after corrective measures have been taken and turbidity has returned to background levels.

Turbidity sampling will be conducted twice daily; the first sample to be taken at least two hours after construction begins. All monitoring data will be compiled, analyzed and will be available for review upon request by review agency personnel. See attached sample copy of the Daily Monitoring Report Form upon which all turbidity data will be recorded.

APPENDIX A: EXHIBITS

STATE OF FLORIDA



LEE COUNTY

SITE ADDRESS:

<> WINDSOR RD

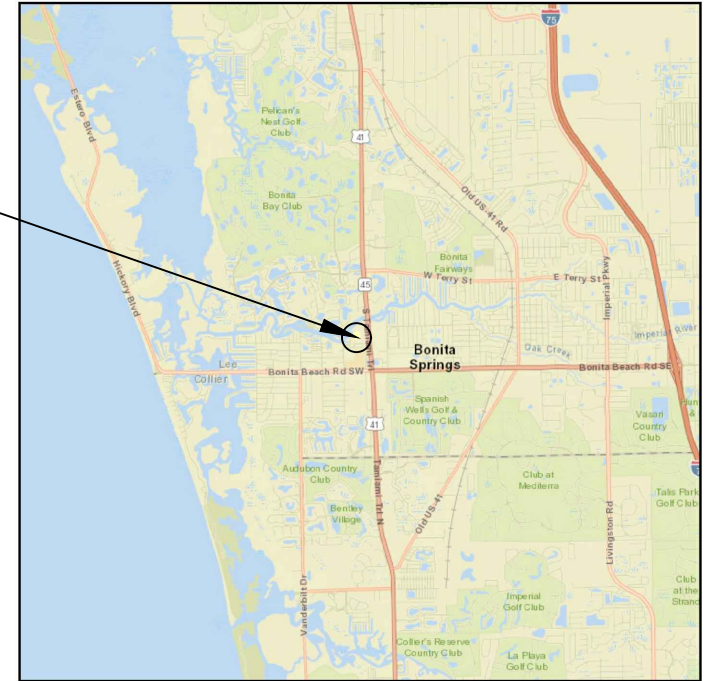
BONITA SPRINGS, FL 34134

<> LATITUDE: N 26.335207

<> LONGITUDE: W -81.809803

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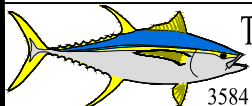
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VICINITY MAP



COUNTY AERIAL



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Marine & Environmental Consulting

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Email: tuna@thanaples.com

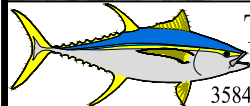
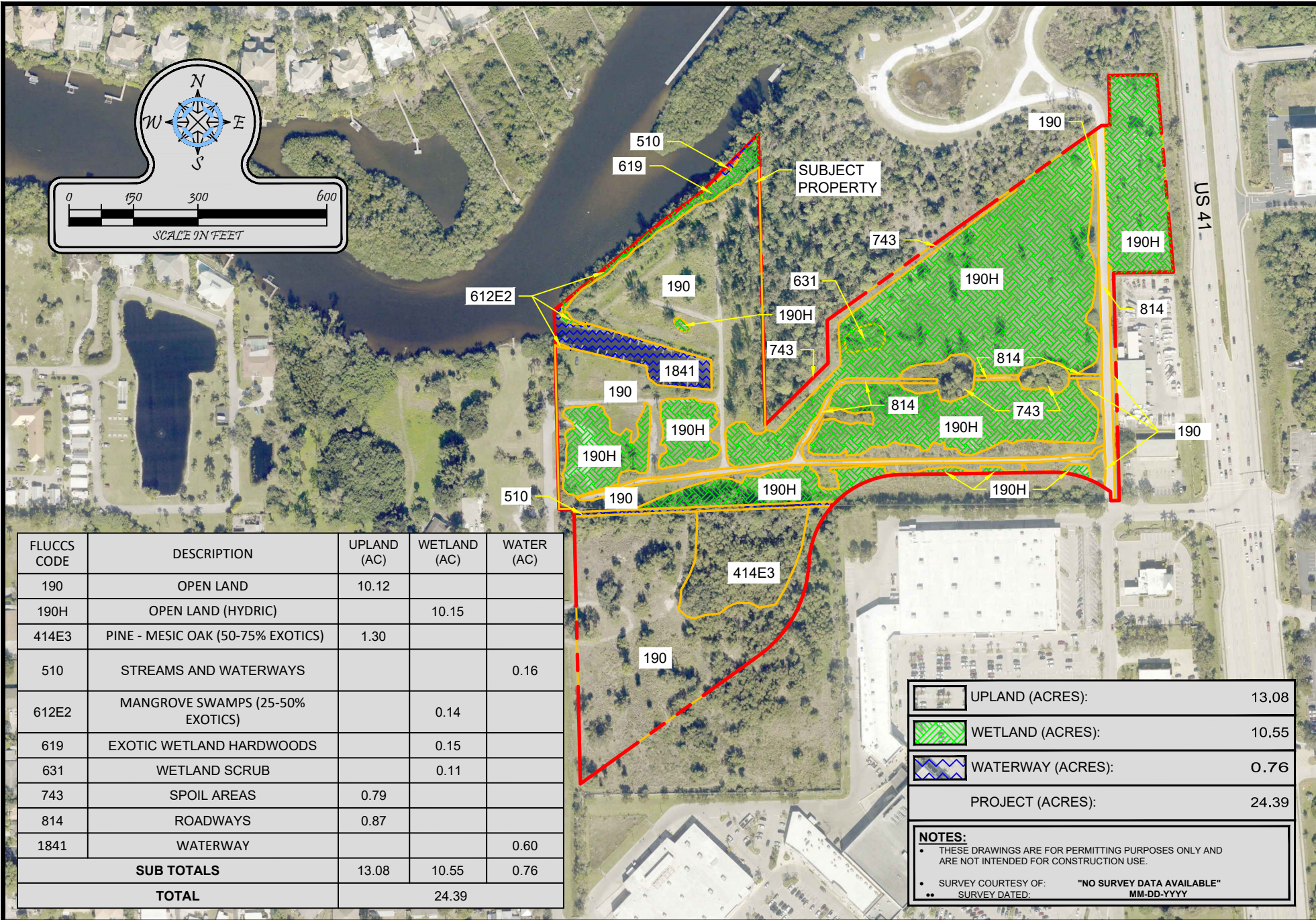
Phone: (239) 643-0166

Fax: (239) 643-6632

ANGLERS PARADISE LOCATION MAP

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DESIGNED:	TH	REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DRAWN BY:	RMJ	1.	RMJ	10-12-21	CH	ADDED SRS SHEET
CREATED:	06-15-21	2.	RMH	12-16-21	TH	SHEETS 02,04-05,09,12 & 13
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	01 OF 14	4.	-	-	-	-
		5.	-	-	-	-
SECTION- 33		TOWNSHIP- 47 S		RANGE- 25 E		



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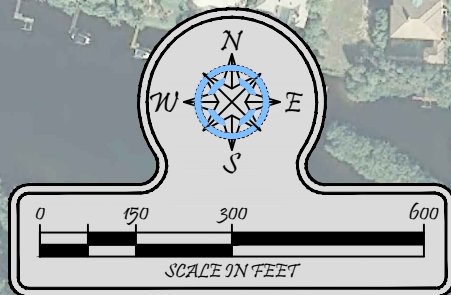
ANGLERS PARADISE

CURRENT FLUCFCS MAP

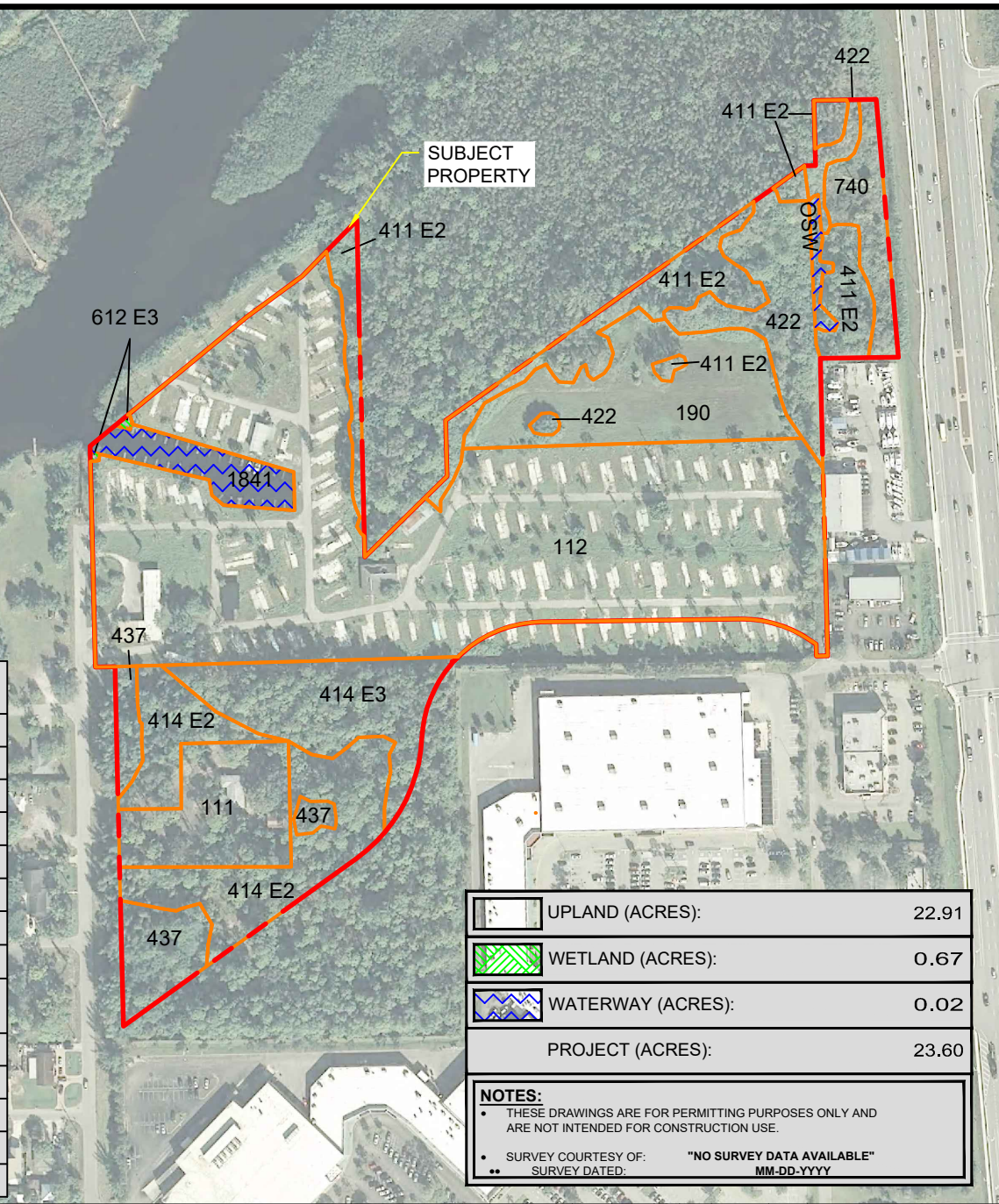
THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGES
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CREATED:	06-15-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	02 OF 14	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33 TOWNSHIP- 47S RANGE- 25E



FLUCCS CODE	DESCRIPTION	UPLAND (AC)	WETLAND (AC)	WATER (AC)
111	SINGLE FAMILY RESIDENCE	1.25		
112	MOBILE HOME UNITS	11.38		
190	OPEN LAND	1.99		
411E2	PINE FLATWOODS (25-50% EXOTICS)	1.88		
414E2	PINE - MESIC OAK (25-50% EXOTICS)	2.11		
414E3	PINE - MESIC OAK (50-75% EXOTICS)	1.49		
422	BRAZILIAN PEPPER	1.35		
437	AUSTRALIAN PINE	0.85		
612E2	MANGROVE SWAMPS (25-50% EXOTICS)		0.02	
740	DISTURBED LANDS	0.61		
1841	WATERWAY			0.56
OSW	OTHER SURFACE WATERS			0.11
SUB TOTALS		22.91	0.02	0.67
TOTAL		23.60		



	UPLAND (ACRES):	22.91
	WETLAND (ACRES):	0.67
	WATERWAY (ACRES):	0.02
PROJECT (ACRES):		23.60

NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE"
- SURVEY DATED: MM-DD-YYYY



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ANGLERS PARADISE

2009 FLUCFCS MAP

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DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGED
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CREATED:	06-15-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	03 OF 14	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33 TOWNSHIP- 47 S RANGE- 25 E



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ANGLERS PARADISE **SITE PLAN**

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGES
DRAWN BY:	RMJ	1.	RMJ	12-16-21	TH	REV. SITEPLAN
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JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	04 OF 14	4.	-	-	-	-
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SECTION- 33		TOWNSHIP- 47 S		RANGE- 25 E		



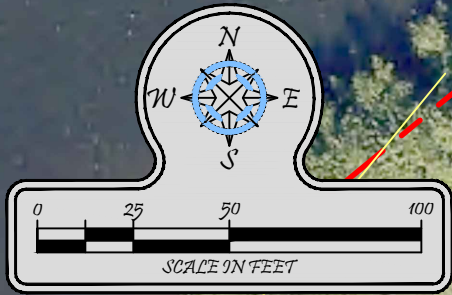
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 Marine & Environmental Consulting
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ANGLERS PARADISE

IMPACTS MAP

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE

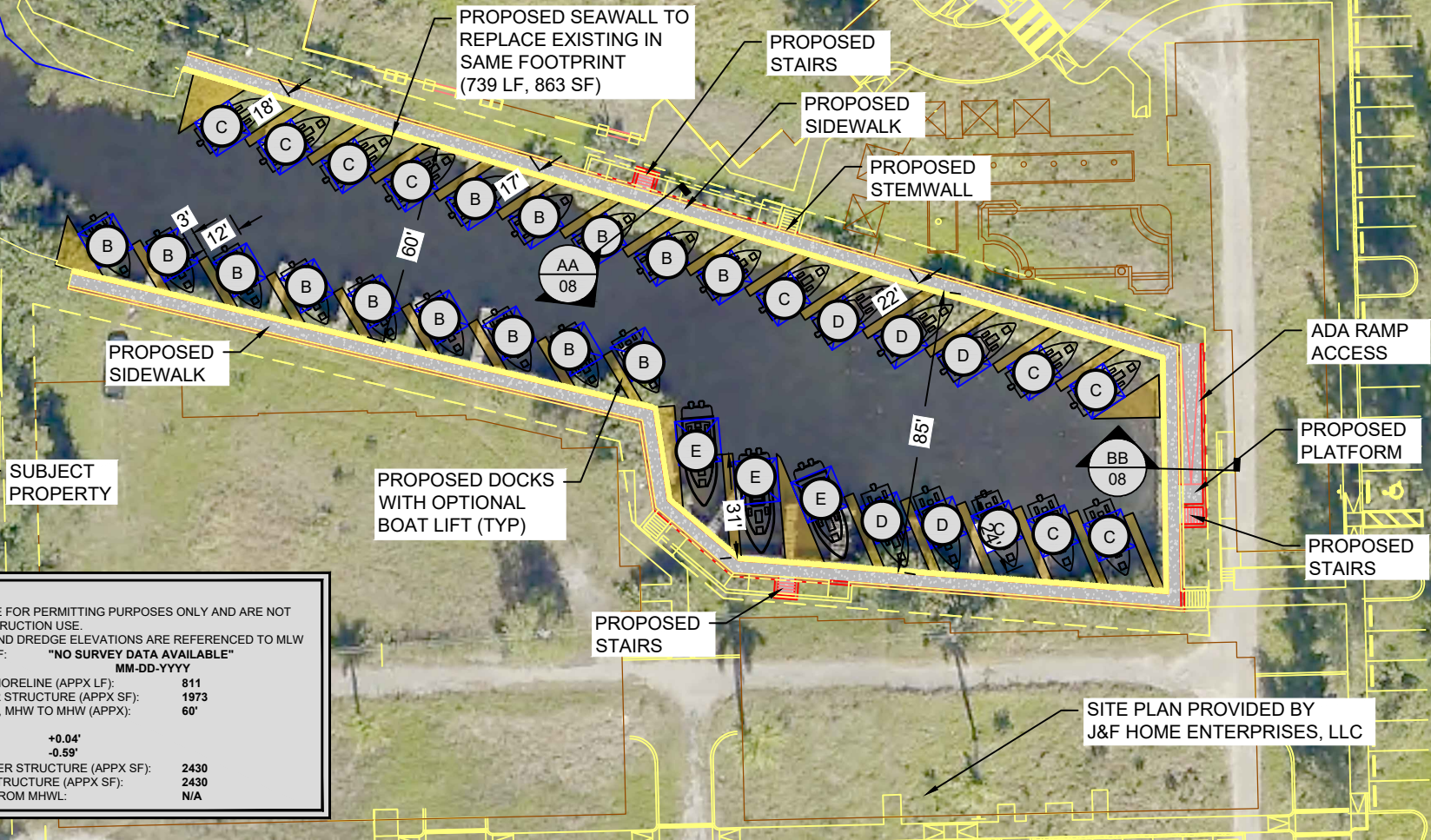
	WETLAND IMPACT	446,890 SF (10.26 AC)
NOTES: - THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE. - SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE" - SURVEY DATED: MM-DD-YYYY		



CLASS	LENGTH (LOA)	SLIP WIDTH	SLIPS
B	20	12	14
C	23	12	9
D	25	12	5
E	30	13	3
TOTAL			31

NOTES:

- <> ALL CONSTRUCTION WILL BE COMPLIANT WITH THE LEE COUNTY MPP.
- <> DOCKS WILL BE CONSTRUCTED FROM UPLANDS.
- <> DREDGING WILL BE CONDUCTED FROM UPLANDS.
- <> ALL DOCK WOOD PILINGS WILL BE WRAPPED FROM 1' ABOVE MHW TO 6" BELOW SUBSTRATE.
- <> PILINGS MAY BE DRIVEN OR JETTED, DEPENDING ON GEOTECHNICAL CHARACTERISTICS.
- <> ALL IN WATER CONSTRUCTION WILL BE CONTAINED WITHIN FLOATING TURBIDITY CURTAINS.



NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE"
- SURVEY DATED: MM-DD-YYYY
- APPLICANT OWNED SHORELINE (APPX LF): 811
- EXISTING OVERWATER STRUCTURE (APPX SF): 1973
- WIDTH OF WATERWAY, MHW TO MHW (APPX): 60'
- TIDAL DATUM:
- MHW (NAVD)= +0.04'
- MLW (NAVD)= -0.59'
- PROPOSED OVERWATER STRUCTURE (APPX SF): 2430
- TOTAL OVERWATER STRUCTURE (APPX SF): 2430
- TOTAL PROTRUSION FROM MHWL: N/A



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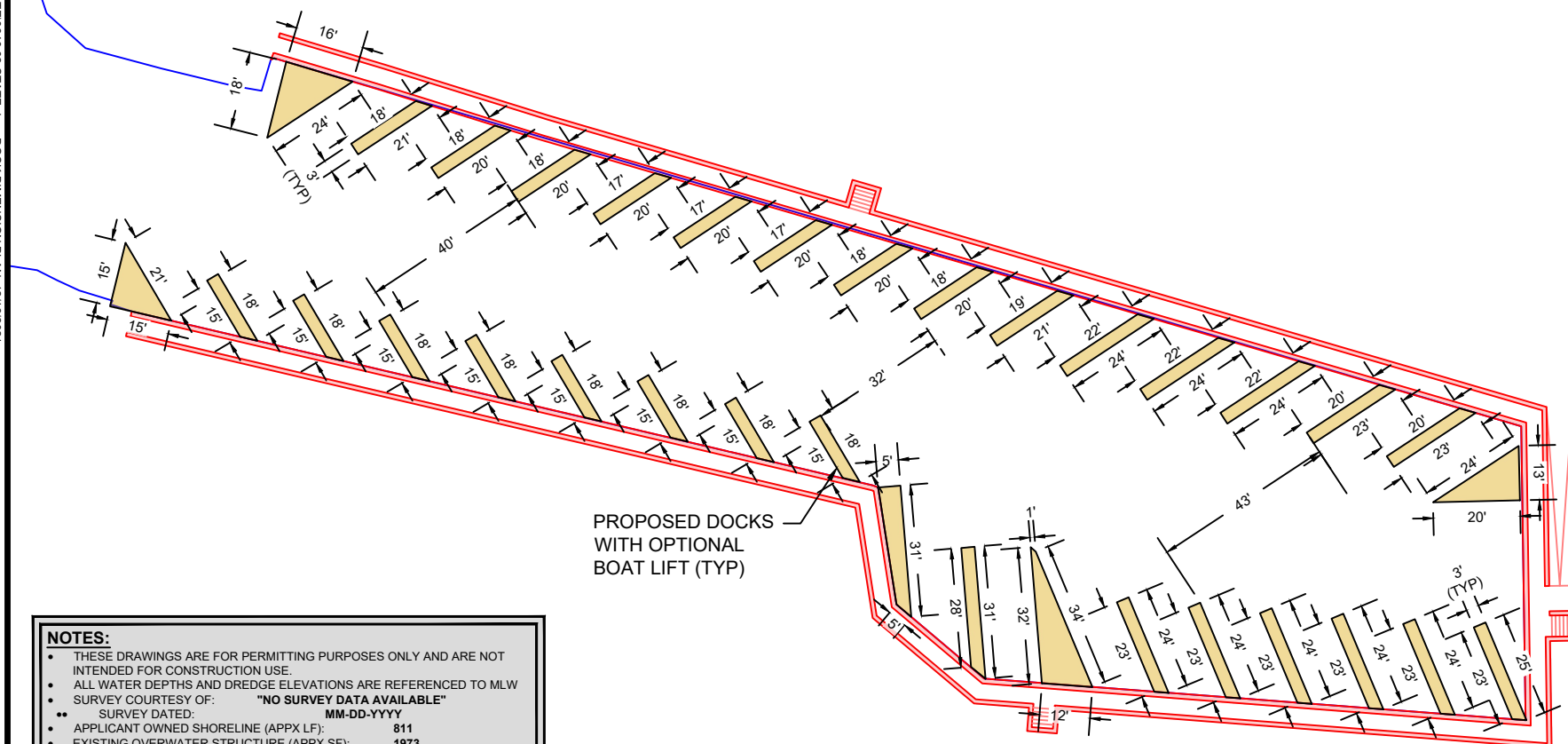
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE BASIN PLAN

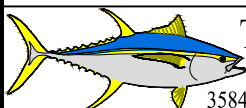
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SECTION- 33 TOWNSHIP- 47 S RANGE- 25 E



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- SURVEY DATED: **MM-DD-YYYY**
- APPLICANT OWNED SHORELINE (APPX LF): **811**
- EXISTING OVERWATER STRUCTURE (APPX SF): **1973**
- WIDTH OF WATERWAY, MHW TO MHW (APPX): **60'**
- TIDAL DATUM:
 - MHW (NAVD)= **+0.04'**
 - MLW (NAVD)= **-0.59'**
- PROPOSED OVERWATER STRUCTURE (APPX SF): **2430**
- TOTAL OVERWATER STRUCTURE (APPX SF): **2430**
- TOTAL PROTRUSION FROM MHWL: **N/A**



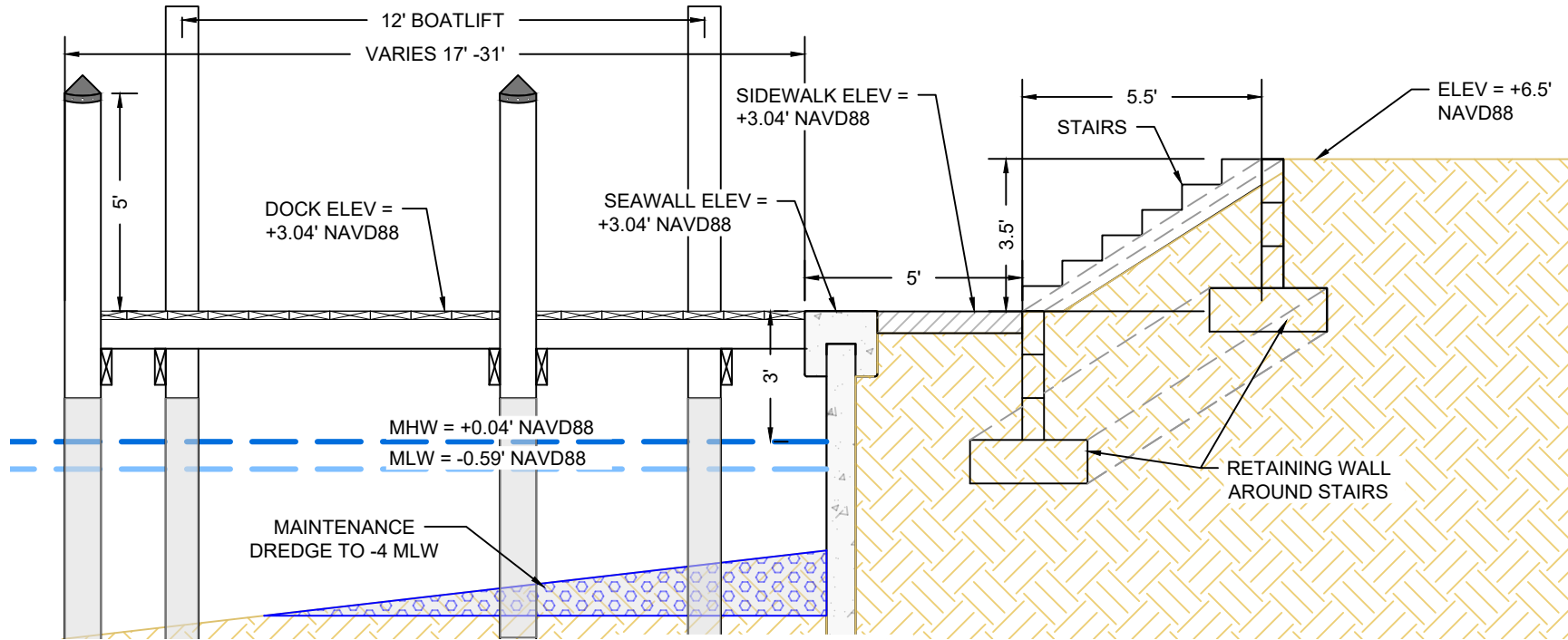
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ANGLERS PARADISE

DOCK DIMENSION PLAN

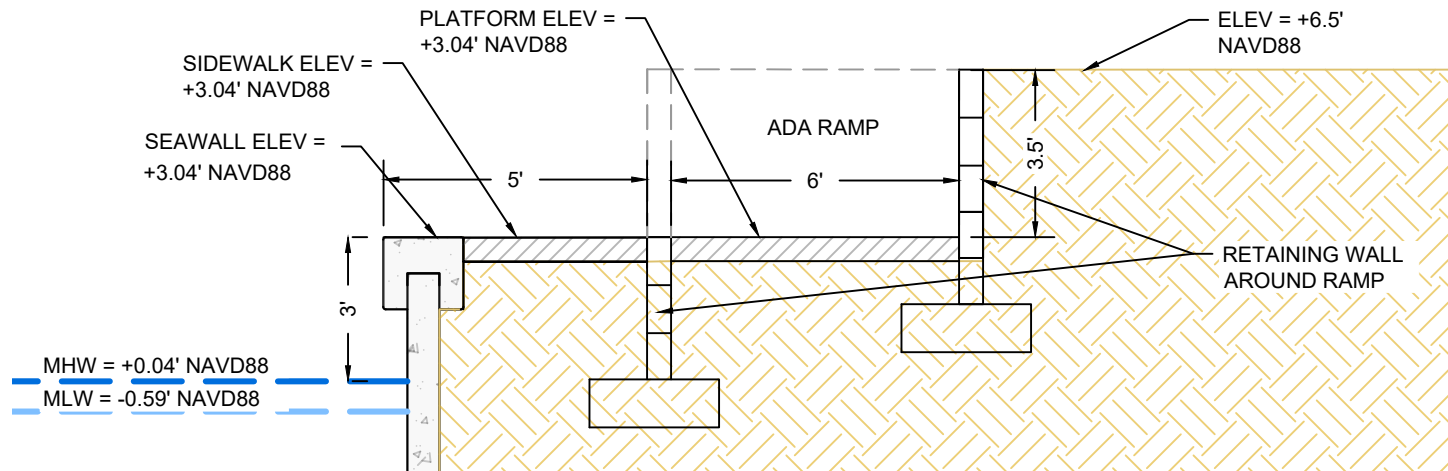
THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE

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JOB NO.:	0840.02	3.	-	-	-
SHEET NO.:	07 OF 14	4.	-	-	-
SECTION- 33		TOWNSHIP- 47 S		RANGE- 25 E	



CROSS SECTION AA

SCALE: 1" = 4'



CROSS SECTION BB

SCALE: 1" = 4'



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ANGLERS PARADISE **CROSS SECTION**

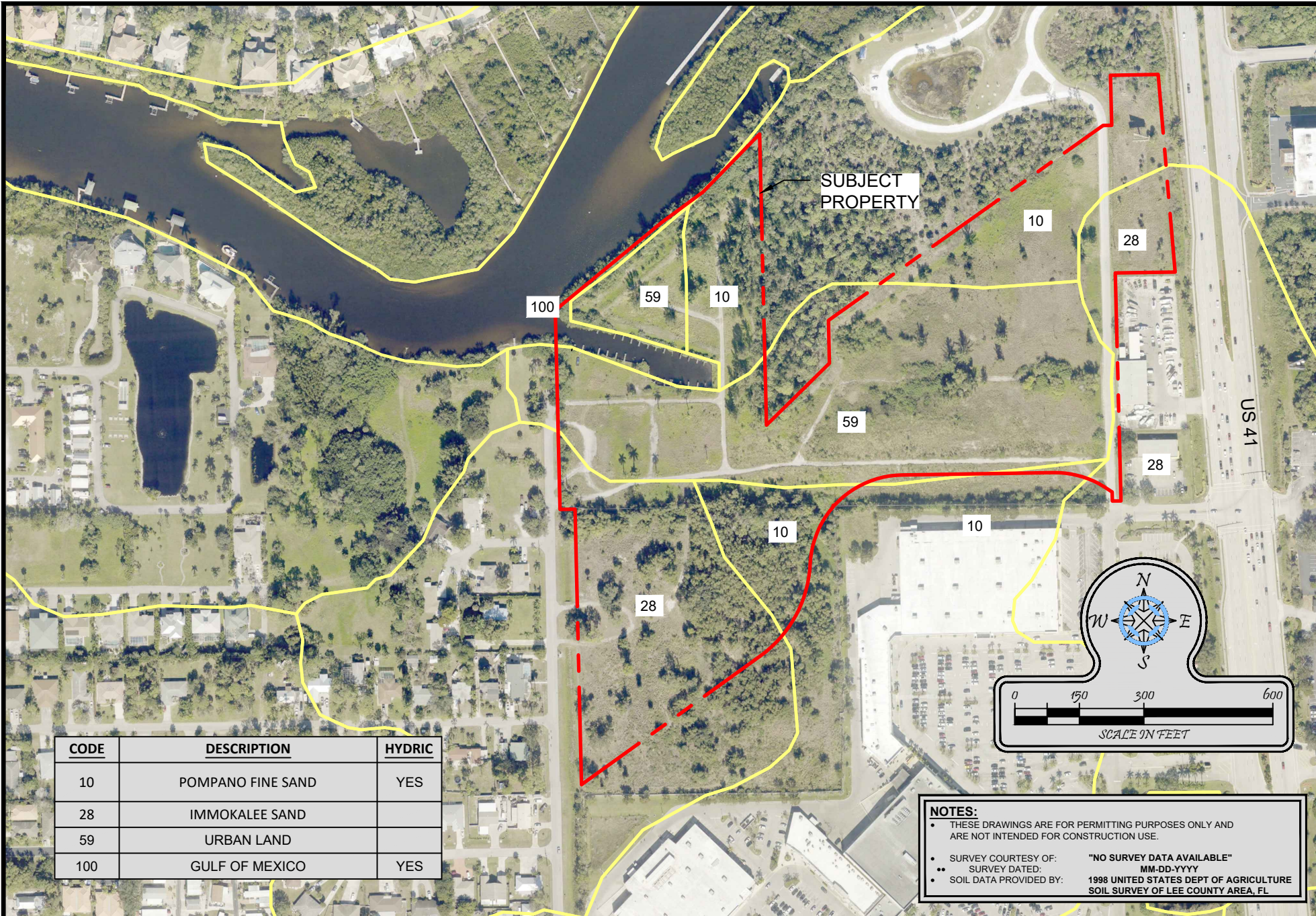
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JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	08 OF 14	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33

TOWNSHIP- 47S

RANGE- 25E



CODE	DESCRIPTION	HYDRIC
10	POMPAÑO FINE SAND	YES
28	IMMOKALEE SAND	
59	URBAN LAND	
100	GULF OF MEXICO	YES

NOTES:

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- SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE"
- SURVEY DATED: MM-DD-YYYY
- SOIL DATA PROVIDED BY: 1998 UNITED STATES DEPT OF AGRICULTURE SOIL SURVEY OF LEE COUNTY AREA, FL



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Marine & Environmental Consulting
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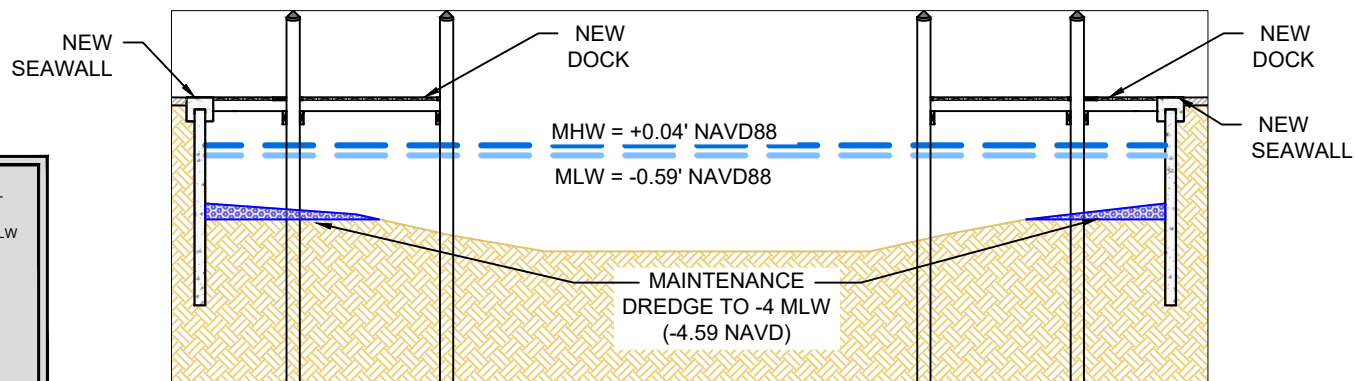
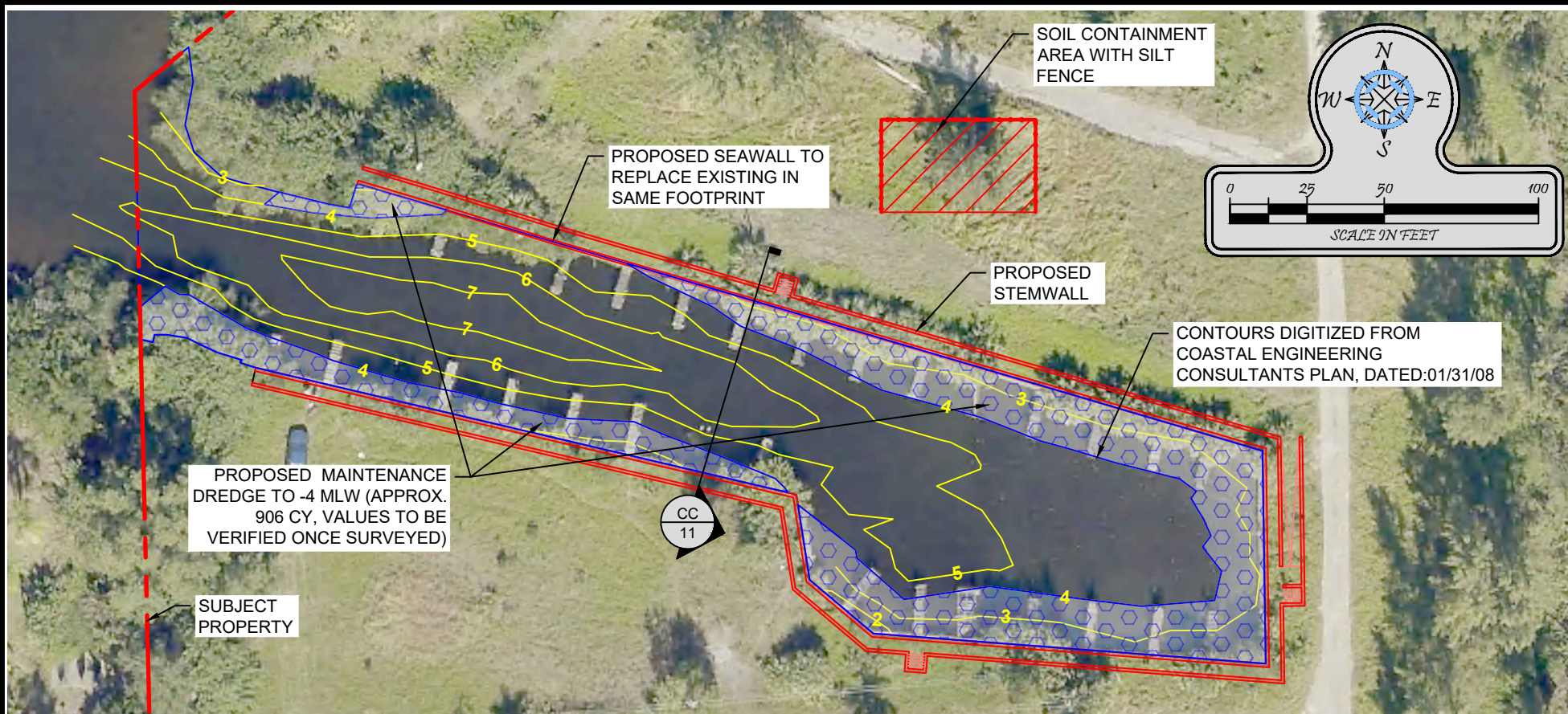
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE SOILS MAP

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DESIGNED:	TH	REV#	REV BY	DATE	CHK BY	CHANGED
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JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	10 OF 14	4.	-	-	-	-
		5.	-	-	-	-
SECTION- 33		TOWNSHIP- 47S		RANGE- 25E		

P:\0840.02 Angler's Paradise 2020\CAD\PERMIT-STATE\0840.02-STATE.dwg DREDGE PLAN 12/16/2021

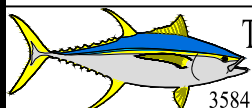


CROSS SECTION CC

SCALE: 1" = 12'

NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE"
- SURVEY DATED: MM-DD-YYYY
- APPLICANT OWNED SHORELINE (APPX LF): 811
- EXISTING OVERWATER STRUCTURE (APPX SF): 1973
- WIDTH OF WATERWAY, MHW TO MHW (APPX): 60'
- TIDAL DATUM:
 - MHW (NAVD)= +0.04'
 - MLW (NAVD)= -0.59'
- PROPOSED OVERWATER STRUCTURE (APPX SF): 2430
- TOTAL OVERWATER STRUCTURE (APPX SF): 2430
- TOTAL PROTRUSION FROM MHWL: N/A



Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting

3584 Exchange Ave. Naples, FL 34104-3732

Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE DREDGE PLAN

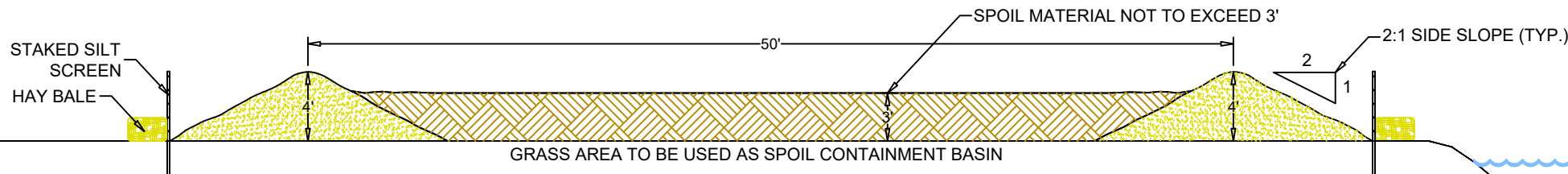
THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGED
DRAWN BY:	RMJ	1.	-	-	-	-
CREATED:	07-15-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	11 OF 14	4.	-	-	-	-
		5.	-	-	-	-
SECTION- 33		TOWNSHIP- 47S		RANGE- 25E		

P:\0940.02 Angler's Paradise 2020\00ADPERMIT-STATE\0940.02-STATE.dwg SPOIL CONTAINMENT MAP 12/16/2021

CROSS SECTION A-A'

N.T.S.



NOTES:

NO SPOIL RUNOFF INTO STATE WATERS

BOTH ENDS OF THE TURBIDITY CURTAIN SHOULD EXTEND FROM THE SHORELINE O COLUMN. PLACE THE APPROPRIATE # OF ANCHORS TO HOLD THE CURTAIN IN PLACE BASED ON THE VELOCITY OF THE WATERBODY AT THE TIME OF CONSTRUCTION AND ALLOW ENOUGH SLACK FOR BOTH FLOOD AND EBB CONDITIONS.

THE CONSTRUCTION AREA ARE SURROUNDED BY THE TURBIDITY CURTAIN. TURBIDITY (NTU) WILL BE MONITORED TWICE DAILY, AT LEAST 4 HRS APART DURING ANY IN WATER WORK AT THE SITE. TURBIDITY STATIONS WILL BE LOCATED 200' UPSTREAM AND DOWNSTREAM OF THE WORK AREA AT THE WATER'S SURFACE AND 1' ABOVE THE BOTTOM WITHIN THE SETTLING AREA, WITHIN ANY VISIBLE TURBIDITY PLUMES AND AT LEAST 200' DOWN CURRENT FROM THE WORK AREA. A BACKGROUND STATION WILL BE LOCATED AT LEAST 200 YARDS UP-CURRENT OR AGAINST THE TIDE FROM THE SAMPLES WITHIN THE CONSTRUCTION AREA AT THE WATER'S SURFACE AND 1' FROM THE BOTTOM.

ALL TURBIDITY DATA SHALL BE DOCUMENTED AND SUBMITTED TO DEP.

IF TURBIDITY LEVELS IN THE ADJACENT WATERS ARE GREATER THAN THOSE OF THE BACKGROUND STATION, ALL WORK MUST BE STOPPED AND DEP NOTIFIED.

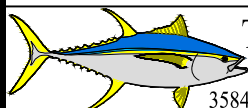
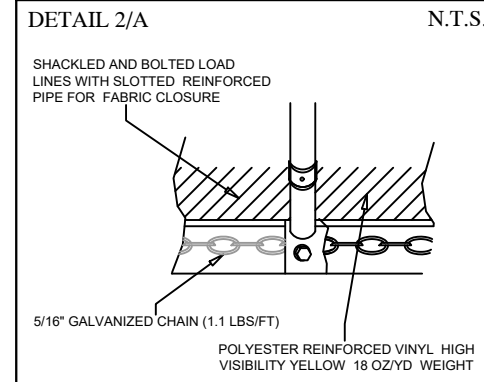
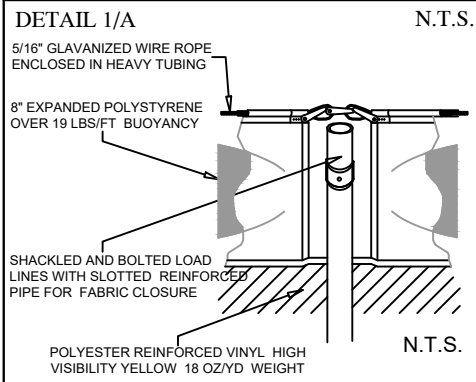
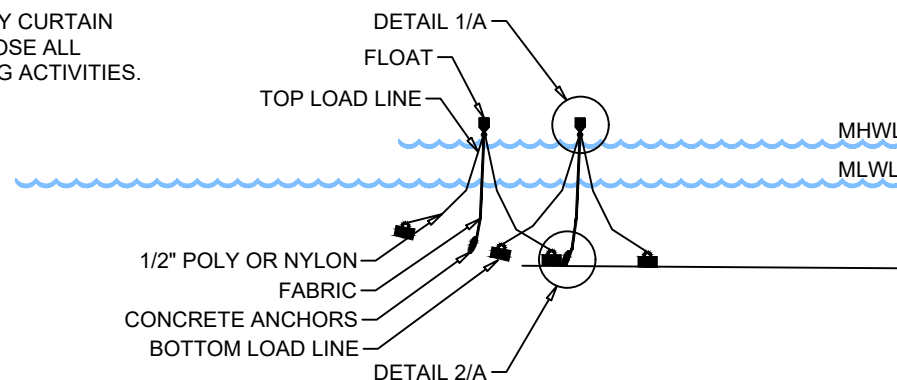
DEP STAFF WILL NOTIFY WHEN WORK MAY CONTINUE.

CURTAIN WILL REMAIN IN PLACE UNTIL TURBIDITY LEVELS ARE NORMAL. SPOIL TO BE OFFLOADED FROM BARGE TO TEMPORARY HOLDING AREA VIA BARGE MOUNTED BACKHOE. SPOIL WILL BE MOVED TO PERMANENT SPOIL FIELD VIA UT TO THE WORK AREA FROM THE TOP TO THE BOTTOM OF THE WATERFRONT END LOADER.

TYPICAL TURBIDITY CURTAIN DETAIL

N.T.S.

TURBIDITY CURTAIN TO ENCLOSE ALL DREDGING ACTIVITIES.



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ANGLERS PARADISE

SPOIL CONTAINMENT MAP

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV#	REV BY	DATE	CHK BY	CHANGED
DRAWN BY:	RMJ	1.	RMJ	12-07-21	TH	REV. NOTES
CREATED:	06-15-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	12 OF 14	4.	-	-	-	-
		5.	-	-	-	-
SECTION- 33		TOWNSHIP- 47 S		RANGE- 25 E		



NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- SURVEY COURTESY OF: "NO SURVEY DATA AVAILABLE"
- SURVEY DATED: MM-DD-YYYY

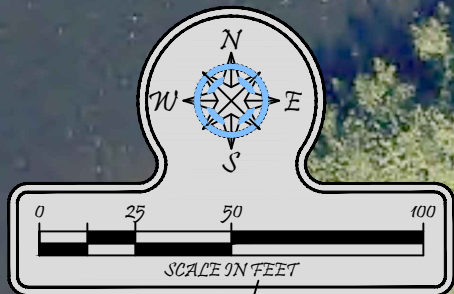
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 Marine & Environmental Consulting
 3584 Exchange Ave. Naples, FL 34104-3732
 Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE TURBIDITY MAP

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGES
DRAWN BY:	RMJ	1.	RMJ	12-07-21	TH	REV. SAMPLING LOCATIONS
CREATED:	06-15-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	13 OF 14	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33 TOWNSHIP- 47S RANGE- 25E



PROPERTY LINE

NO SEAGRASSES
WERE OBSERVED
GROWING WITHIN
THE PROPOSED
PROJECT AREA

TRANSECTS
(10' APART)



Turrell, Hall & Associates, Inc.
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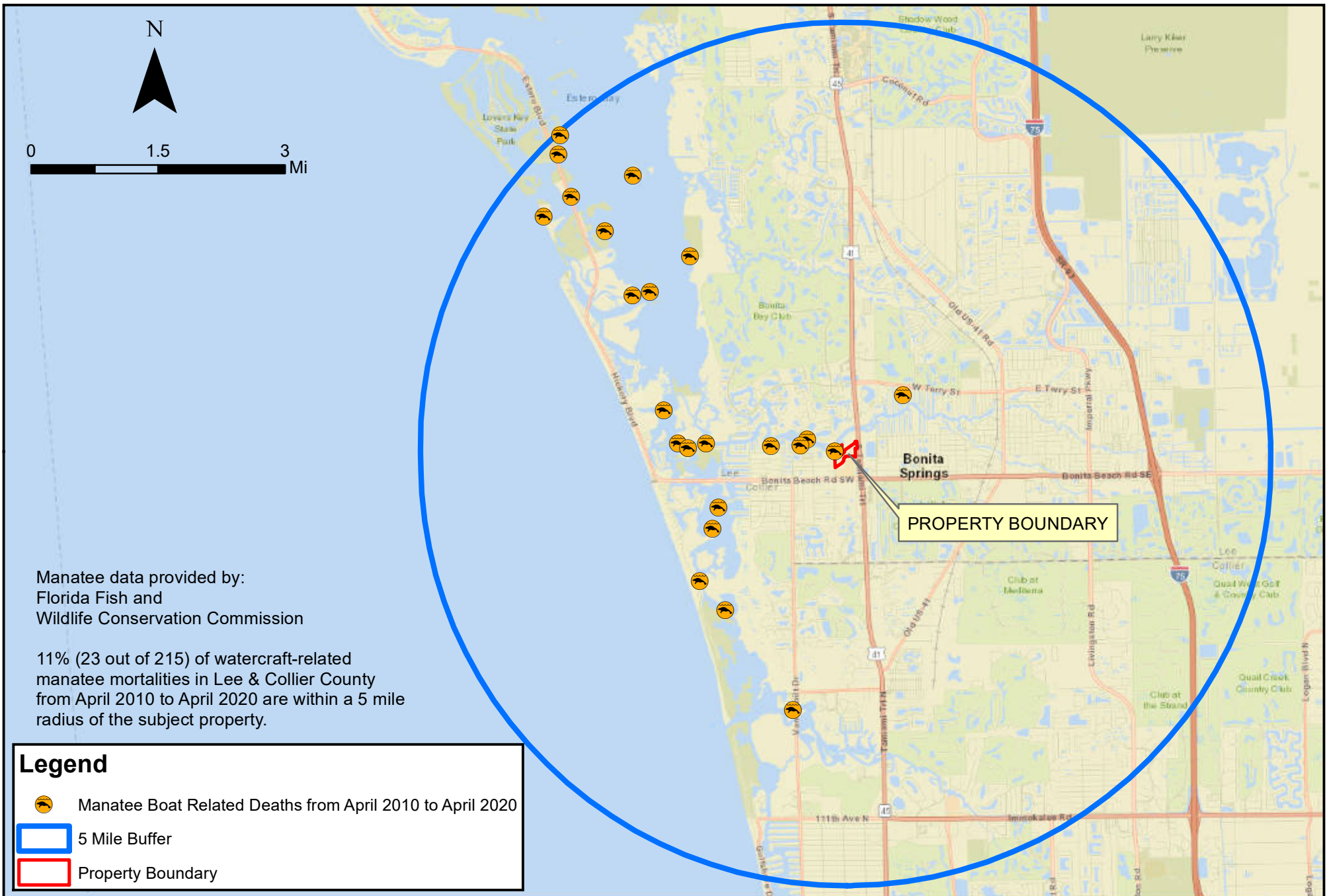
3584 Exchange Ave. Naples, FL 34104-3732

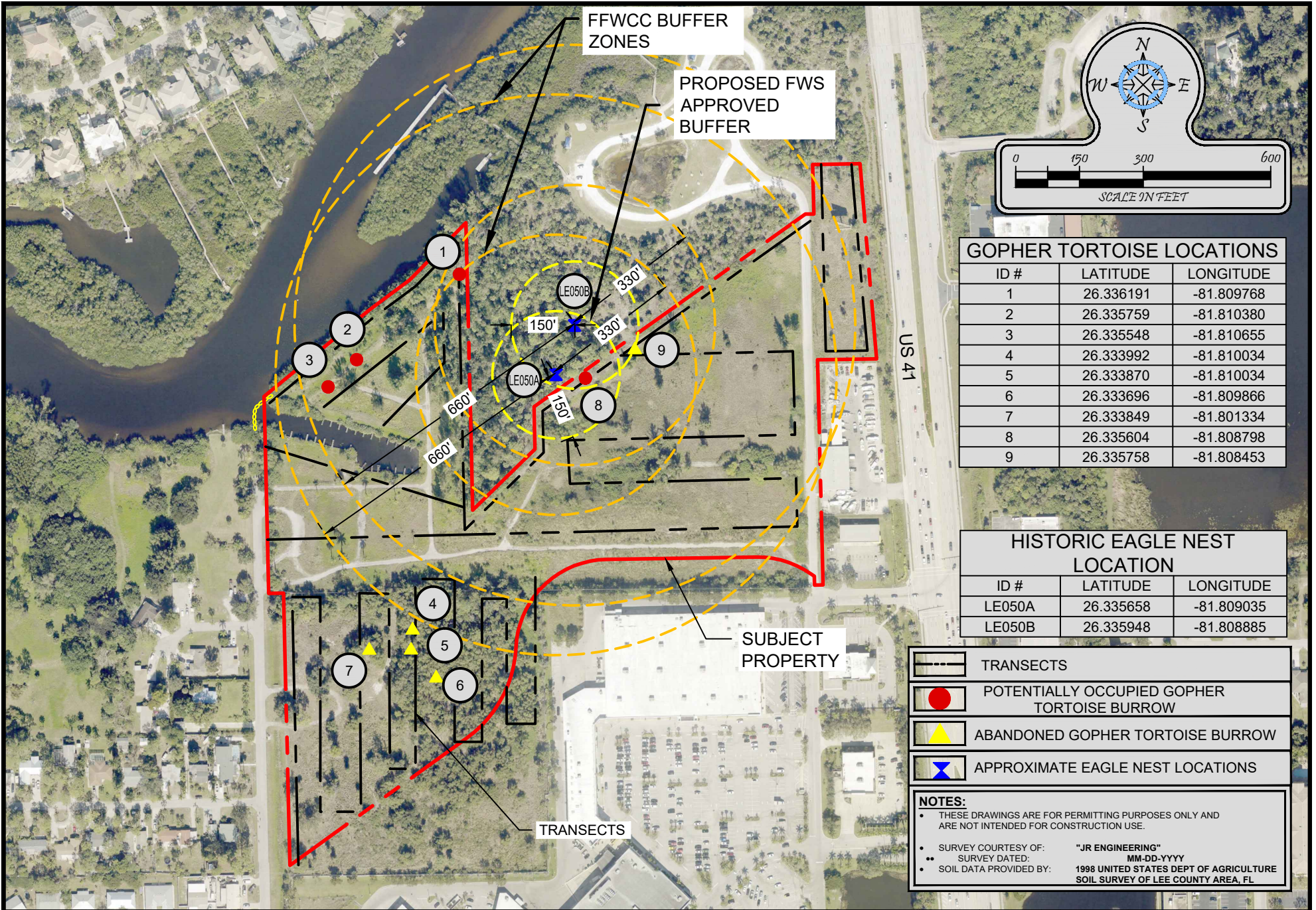
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

ANGLERS PARADISE SUBMERGED RESOURCE SURVEY

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGES
DRAWN BY:	RMJ	1.	-	-	-	-
CREATED:	10-12-21	2.	-	-	-	-
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	14 OF 14	4.	-	-	-	-
		5.	-	-	-	-
SECTION- 33		TOWNSHIP- 47 S		RANGE- 25 E		





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ANGLERS PARADISE **LISTED SPECIES MAP**

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

DESIGNED:	TH	REV	REV BY	DATE	CHK BY	CHANGED
DRAWN BY:	RMJ	1.	TH	12-16-21	TH	REV. EAGLE NEST LOCATION
CREATED:	06-15-21	2.	RMJ	07-06-22	TH	REV. EAGLE NEST LOCATION
JOB NO.:	0840.02	3.	-	-	-	-
SHEET NO.:	09 OF 14	4.	-	-	-	-
		5.	-	-	-	-

SECTION- 33 TOWNSHIP- 47S RANGE- 25E

APPENDIX B:
TURBIDITY MONITORING FORM

Angler's Paradise Turbidity Data

Daily Monitoring Report

TURBIDITY MONITORING DOCUMENT

Angler's Paradise

P.O. Box 8

Bonita Springs, FL 34143

Lee County, Section 33, Township 47 South, Range 25 East

PERMIT/AUTHORIZATION NO. _____

Site Conditions:

Date: _____

Weather _____

High Tide _____

Low Tide _____

Sample 1

Station No. _____	NTU	Time	Sample Depth (50 % of total)
-------------------	-----	------	------------------------------

Background	_____	_____	_____
------------	-------	-------	-------

Compliance	_____	_____	_____
------------	-------	-------	-------

Difference	_____		
------------	-------	--	--

Sample 2

Station No. _____	NTU	Time	Sample Depth (50 % of total)
-------------------	-----	------	------------------------------

Background	_____	_____	_____
------------	-------	-------	-------

Compliance	_____	_____	_____
------------	-------	-------	-------

Difference	_____		
------------	-------	--	--

Comments:

Samplers Signature _____

Equipment used to sample turbidity: HF scientific / Micro TPI

ARTICLE III. - BALD EAGLES

Sec. 7-72. - Purpose of article.

In order to maintain a stable or increasing population of the bald eagle in Bonita Springs by protecting eagle habitat, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the bald eagle population in the city can be maintained. This article is intended to protect the critical nesting habitat of the bald eagle and promote national, state, and community pride and esteem by negotiating with owners of land surrounding eagle nests to provide an optimal management plan for land subject to imminent development, including providing special compensation incentives to private property owners for loss of property committed to critical bald eagle nesting habitat. This article is also intended to provide information and assistance to property owners to enable them to avoid violations of city, county, state and federal law.

(Ord. No. 10-05, § 1(7-111), 6-2-2010)

Sec. 7-73. - Definitions.

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned nest means a nest that is intact or partially intact but has been inactive through five or more consecutive nesting seasons.

Active nest means a nest that shows or showed evidence of breeding by bald eagles, such as an adult attending the nest or in incubating position, a clutch of eggs, or a brood of nestlings, at any time during the current or most recent nesting season.

Agricultural activities means bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14.

Alternate nest means a nest that is intact or partially intact and has been used by bald eagles at any time during the past five nesting seasons, but was not used during the current or most recent nesting season. An inactive nest is considered to be an alternate nest until it has been inactive for five consecutive nesting seasons, at which time it becomes an abandoned nest.

Bald eagle (*Haliaeetus leucocephalus*) means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state, county and city.

Buffer area means a natural or manmade area designated by the city council in accordance with section 7-79 that must remain predominantly in its natural or created native vegetated state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance averaging 660 feet from a nest and be irregularly shaped areas, except that a larger buffer area may be offered voluntarily in accordance with section 7-80(3).

Critical eagle nesting habitat means habitat which, if lost, could result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flight paths, and alternate nests within the buffer area.

Disturb means to agitate or bother a bald eagle to a degree that causes or is likely to cause, based on the best scientific information available:

- (1) Injury to the eagle;

- (2) A decrease in its productivity by substantially interfering with normal breeding, feeding or sheltering behavior; or
- (3) Nest abandonment by substantially interfering with normal breeding, feeding or sheltering behavior.

Fledgling means a young eagle that is capable of flight and has left the nest, usually at ten to 12 weeks of age. Fledglings may return to the nest for several weeks to be fed or to roost.

Flight path means the route within the buffer area most frequently traveled by eagles directly to and from their nest, perch trees, and important foraging areas.

Foraging area means the location where eagles feed, typically near open waters such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in area with little or no water where prey species are abundant (e.g., rabbit, rodents or carrion).

FWC means the Florida Fish and Wildlife Conservation Commission or its successor.

Inactive nest means a nest that was not used during the current or most recent nesting season.

Lost nest means a nest where the nest or nest tree is destroyed by natural causes (e.g., nest that fell apart or was blown out of a tree, or tree itself was lost) and is not rebuilt in the same tree within three nesting seasons.

Nesting season means the period from October 1 to May 15, unless the young fledge before or after May 15 as determined by city environmental sciences staff.

Nestling means a young eagle (eaglet) that is incapable of flight and is dependent on its parents. Once an eaglet fledges (i.e., leaves the nest), it becomes a fledgling.

Perch tree means a tree used by bald eagles for resting, sleeping, foraging, hunting, feeding, lookout, display or thermal benefit.

Unified control has the same meaning as defined in chapter 4 and chapter 9.

USFWS means the United States Fish and Wildlife Service or its successor.

(Ord. No. 10-05, § 1(7-112), 6-2-2010)

Sec. 7-74. - Violation of ordinance; penalty.

- (a) Any person convicted of violation of any of the provisions of this article may be punished as provided in section 1-5. Such person will also be responsible for costs and expenses involved in the case. Each day such violation continues will be considered a separate offense.
- (b) Any violator of this article may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the city may take necessary corrective action, the cost of which will be placed as a lien upon the property.
- (c) In addition, any violation of this article is a public nuisance and may be restrained by injunction by any interested party.
- (d) The city will notify the FWC of wildlife complaints or potential FWC rule violations. The city will coordinate with FWC in enforcement activities.

(Ord. No. 10-05, § 1(7-113), 6-2-2010)

Sec. 7-75. - Provisions of article supplemental.

This article does not replace the Federal Endangered Species Act, the Federal Migratory Bird Treaty Act, the Federal Bald and Golden Eagle Protection Act, the Florida Endangered Species Act, or the

permitting requirements of FWC's Bald Eagle Permitting Framework, that is incorporated in FWC Rule 68A-16.002, Florida Administrative Code, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat in the city.

(Ord. No. 10-05, § 1(7-114), 6-2-2010)

Sec. 7-76. - Applicability of article.

This article applies only to all real property within 660 feet (or 750 feet if impact fee credits are issued pursuant to section 7-80(3)) of a nest unless the nest is abandoned or lost. Compliance with this article will be required prior to receiving a building permit, development order, zoning approval, notice of clearing, vegetation removal permits or amendments thereto.

(Ord. No. 10-05, § 1(7-115), 6-2-2010)

Sec. 7-77. - Public acquisition of rights and interest in critical eagle nesting habitat lands.

The city may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the city may acquire an interest through:

- (1) Receiving donations of critical eagle nesting habitat lands;
- (2) Purchase or conveyance by dedication of a perpetual conservation easement;
- (3) Outright purchase or lease of critical eagle nesting habitat;
- (4) Acquisition through eminent domain proceedings pursuant to Article II, Section 9, and Article X, Section 6, of the State Constitution and applicable provisions of the state statutes; or
- (5) Implementation by the city council of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

(Ord. No. 10-05, § 1(7-117), 6-2-2010)

Sec. 7-78. - Notification procedure.

The city will notify the FWC and the USFWS upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within 660 feet of a nest. The notice must include any available information gathered regarding the behavior of the eagles that are occupying the nest.

(Ord. No. 10-05, § 1(7-118), 6-2-2010)

Sec. 7-79. - Mechanisms for the protection of critical eagle nesting habitat.

- (a) *Construction of single- or two-family dwelling unit (including accessory structures.)* Appropriate conditions limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this article is applicable where such conditions are deemed necessary by the director of the department of community development (or designee) to prevent a loss of critical eagle nesting habitat. Such conditions may include, but are not limited to, distances from the nest, defining the dates, equipment, and hours of operation for exterior construction to avoid disturbing nesting eagles, eggs or nestlings.

- (b) *Agricultural activities.* All persons intending to conduct new agricultural activities on property to which this article is applicable must consult with city staff prior to approval of an application for a notice of clearing or the commencement of activities. Any improvements within 330 feet must be conducted with a bald eagle management plan consistent with the FWC Bald Eagle Management Plan and designed to protect the habitat. Any proposal for improvements within 330 feet must indicate that the crop planting or harvesting will not occur during nesting season to avoid impacts to the bald eagle habitat.
- (c) *Exotic vegetation removal.* All persons intending to remove exotic vegetation, even if required to do so by city ordinance, on property where an active or alternate nest is within 660 feet must consult with city environmental sciences staff prior to vegetation removal. Appropriate conditions may be placed on the exotic removal notice.
- (d) *All other development.*
 - (1) All persons contemplating the development of property to which this article is applicable are to consult with the environmental sciences division as early in the planning and design process as possible to ensure enhancement or protection of critical eagle nesting habitat within the buffer area. No construction (structures or site work) may occur within 660 feet during the nesting season, unless otherwise modified in an approved bald eagle management plan, in accordance with the National Guidelines and this article.
 - (2) Property owners and/or developers are required to prepare a management plan that protects critical eagle nesting habitat. However, no new bald eagle management plan will be required for projects in which a bald eagle management plan was submitted to and accepted by the city to support a building permit, local development order, development of regional impact, or zoning application approval. A new or amended bald eagle management plan will be required if subsequent development or a change in use is proposed that is inconsistent with the previously reviewed bald eagle management plan, or if a new or revised bald eagle management plan is required by condition or stipulation of the existing authorization.
 - a. Prior to consideration and approval by resolution of the city council, all eagle management plans must be submitted and will be reviewed by environmental sciences staff.
 - b. The director of community development or designee must recommend approval, denial, or approval of the proposed eagle management plan with conditions, or continue consideration of the proposed eagle management plan to seek technical advice from outside sources or to meet further with the applicant to revise or modify the proposed eagle management plan.
 - c. Staff will present the proposed bald eagle management plan to the city council, along with the written staff opinion and any recommendation from outside sources, if any. This may include any advisory board set up by resolution of city council to assist with monitoring nests and eagle activity.
 - (3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.
 - (4) Management plans to protect or enhance critical eagle nesting habitat must include the following items, where applicable:
 - a. Description of the landscape within and surrounding the critical eagle nesting habitat, including FLUCCFS map, locations and height of active and alternate nest trees and perch trees, tree survey, and a description of the location, height, species and density of understory and canopy vegetation, as related to visibility between the active nest and proposed development.
 - b. History and behavior patterns of the eagle pair.
 - c. A one inch equals 200 feet aerial map and a map at the scale of the development that shows the location of the eagle's nest, flight path to and from the nest, location and size of visual obstacles, such as trees, between the nest and proposed development, nearest

known foraging area for the eagle, location and type of existing and permitted developments within 1,500 feet of the nest, and other critical eagle nesting habitat features, as well as the proposed development.

- d. The boundaries, size, and shape of the proposed buffer area.
 - e. Conservation measures designed to minimize potential adverse impacts of the development on nesting bald eagles that may result in disturbance or abandonment of the nest. Such conservation measures include, but are not limited to, compliance with the management plan and compliance with national or state guidelines, establishment of a planted landscape buffer, construction phasing indicating timing and location of construction activities during nesting and non-nesting periods (i.e., no construction within 330 feet of a nest during nesting season), height limits on buildings within the buffer area, protection of the flight path and the nesting tree, monitoring of eagles and nests using the federal monitoring guidelines, conservation easement, and other necessary measures to protect or enhance critical eagle nesting habitat.
 - f. Techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring.
 - g. Deed restrictions, protective covenants, easements, or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question.
 - h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.
- (5) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.
 - (6) In determining whether the proposed project and conservation measures protect or enhance eagle habitat in accordance with this article and the Bonita Plan, environmental sciences staff will consider the intensity of the proposed and existing development, quality of habitat, behavior of the specific nesting eagles, extent of measures proposed in the eagle management plan, and the consistency with the guidelines promulgated by FWC and the USFWS in the review of management plans and may request technical assistance from the FWC or the USFWS whenever necessary. This review will be the basis of staff recommendation to the city council.
 - (7) An approved management plan will remain effective, notwithstanding the abandonment of a nest, unless the abandonment occurs prior to the use of any incentives (see section 7-80) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

(Ord. No. 10-05, § 1(7-119), 6-2-2010)

Sec. 7-80. - Compensation incentives for protection of critical eagle nesting habitat.

If the city council elects not to acquire a critical eagle nesting habitat, then the city may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat in exchange for the property owner's agreement to institute mechanisms for protection or enhancement of critical eagle nesting habitat on the property:

- (1) For a buffer area of 330 feet in radius or an approximate equivalent acreage, minimum, the following benefits will be granted:
 - a. The property owner will be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for the property as determined through the residential planned development process. For a buffer

area, or portion thereof, composed of wetlands, an internal transfer of one development right per five acres will apply.

- b. The property owner will be allowed priority review and processing of zoning and development applications for the subject property and, if applicable, one other parcel under unified control.
- (2) For a buffer area of 660 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, may be granted:
- a. The city will establish an account to pay community development the zoning application fee on the subject property;
 - b. The city will establish an account to pay community development building permit application fees on the subject property;
 - c. The city will establish an account to pay community development review-related fees on the subject property; and
 - d. The eagle preserve will be available to offset any indigenous preserve or open space requirement at a ratio of 1.5:1 (1.5 acre of indigenous preserve or open space area is offset by each acre of eagle preserve); provided, however, that such incentive has not already been applied in accordance with section 3-417(b)(3) or 3-456(e).
- (3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, will be granted: The city will provide a credit against regional park impact fees on the subject property, and if applicable, one other parcel under unified control located within the same regional park impact fee district. In no event will the credit towards regional park impact fee exceed the appraised value of the dedicated land.
- (4) In order to receive the benefits mentioned in this section, the buffer areas must be designated as critical eagle nesting habitat and must be conveyed to the city by either warranty deed or by dedication of a perpetual conservation easement.
- (5) In no event will the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed twice the appraised value of the buffer area conveyed to the county. The appraised value will be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the city manager.
- (6) City council may by resolution establish an advisory board to provide input on any incentive plan.

(Ord. No. 10-05, § 1(7-120), 6-2-2010)

Secs. 7-81—7-103. - Reserved.

REQUESTED MOTION: Authorize a Supplemental Task Authorization with McMahon & Associates in the amount of \$117,085 for assistance in the US 41/Bonita Beach Road Quadrant Plan Northwest Phase I

REQUESTOR: Matt Feeney, Assistant City Manager

AGENDA: Consent

STRATEGIC PRIORITY: #2 Transportation

BACKGROUND:

The City has selected a Design Consultant for the design of the US 41 & Bonita Beach Road intersection. The project will involve new roadway design as well as intersection modification to US 41 and Bonita Beach Road. Significant coordination will be required between Lee County Department of Transportation (LCDOT) and Florida Department of Transportation (FDOT) to ensure a successful design. McMahon & Associates will assist the City and Design Consultant with the coordination and design review necessary to complete this process.

STAFF RECOMMENDATION: Authorize STA with McMahon & Associates in the amount of \$117,085 for assistance in the US 41/Bonita Beach Road Quadrant Plan Northwest Phase I

ATTACHMENTS:

1. Supplemental Task Authorization
-

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 PROFESSIONAL SERVICE/SERVICE PROVIDER AGREEMENT
CHANGE ORDER/SUPPLEMENTAL TASK AUTHORIZATION

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08 P.W.

(A Change Order or Supplemental Task Authorization Requires Approval by the City Manager for Expenditures under \$50,000 or Approval by the Bonita Springs City Council for Expenditures over \$50,000).

MISC. CONTRACT: Traffic Engineering Services / SOLICITATION NUMBER: CN-17-08

PROJECT NAME: Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I / CONTRACT NUMBER: BSC 22-02-026

CONSULTANT: McMahon Associates, Inc. / ACCOUNT NUMBER: 10.950.541.3121

REQUESTED BY: Matt Feeney PW / DATE OF REQUEST: July 21, 2022

Upon the completion and execution of this Change Order or Supplemental Task Authorization by both parties the Consultant is authorized to and shall proceed with the following:

EXHIBIT A: SCOPE OF PROFESSIONAL SERVICE: DATED: July 21, 2022

EXHIBIT B: COMPENSATION & METHOD OF PAYMENT: DATED: July 21, 2022

EXHIBIT C: TIME AND SCHEDULE OF PERFORMANCE: DATED: July 21, 2022

EXHIBIT D: CONSULTANT'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTOR(S): DATED: July 21, 2022

EXHIBIT E: PROJECT GUIDELINES AND CRITERIA: DATED: July 21, 2022

Consultant certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Florida Statute §287.135, the City may immediately terminate this Agreement at its sole option if the Consultant is found to have submitted a false certification; or if the Consultant is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. As provided in Florida Statute 287.135(8), if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

If this Agreement is for more than one million dollars, the Consultant certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Consultant is found to have submitted a false certification; or if the Consultant is placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

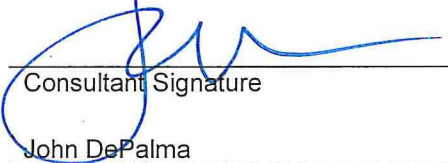
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It is understood and agreed that the acceptance of this modification by the Consultant constitutes an accord and satisfaction. All the remaining terms in the original Agreement, remain the same.

ACCEPTED:

ATTEST:

CITY APPROVAL:



Consultant Signature

City Clerk

City Manager (Under \$50,000)

John DePalma

Print Name

Date

Date Approved

2090 Palm Beach Lakes Blvd., #400

Address

Approved By:

Approved By:

West Palm Beach FL 33409

Address

City Attorney's Office

Mayor, City Council for Bonita Springs

7/21/2022

Date Accepted

Date Approved

Date Approved

Corporate Seal



Exhibit A

Scope of Professional Services

Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
Phase I

Date: July 21, 2022

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08

Section 1 Changes to Professional Services

The Scope of Professional Services as set forth in Exhibit A of the Professional Services Agreement is hereby supplemented or changed, so that the Consultant shall provide and perform the following professional services, tasks or work as a supplement to or change to the Scope of Services previously agreed to and authorized.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or item(s) set forth in Compensation and Method of Payment.

Task 15.00 Miscellaneous Services

"Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
Phase I"

Project will encompass various tasks as listed in the Task Index

The CONSULTANT shall perform work, as per the attachment, directly following Exhibit A

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

FOR: CONSULTANT REPRESENTATIVE FOR THE CITY OF BONITA SPRINGS FOR THE US-41/BONITA BEACH ROAD QUADRANT PLAN – NORTHWEST PHASE I

At the request of the City, McMahon Associates, Inc., hereafter referred to as CONSULTANT, will act as the Owner's Representative, and to be an advocate during the design phase of the project. In this role, the CONSULTANT will oversee and review the development of the design and construction plans, and will ensure the Owner's needs are being met. They will also ensure that the applicable codes and regulations are being followed, as various agencies will be involved, such as, but not limited to: the City of Bonita Springs; the Florida Department of Transportation (FDOT); Lee County; and Utility Operators within the corridor- from the very beginning of the project, through completion and issuance of applicable permits for implementation of construction.

The goal of this effort is for the CONSULTANT to provide the oversight of the design and construction plans development process of the selected Design Consultant Team, and to ensure reduced costs, maximized value, and to warrant the constructability of the project, while navigating and maintaining the schedule and project budgets. It is anticipated that this project process could consume a 24-month period, therefore, the herein scope of work and cost is representative of this schedule.

TASK 1.0 – DESIGN PLANNING / INITIATION

The project design planning and initiation process will commence with the review of the Design Consultant's anticipated project schedule and budget for the design and construction plans, and as follows:

- a. Schedule – Upon selection the Design Consultant Project Manager will develop a project a schedule. The schedule must account for all the anticipated approvals, through the various agencies and the required permits, and utility operators, to bring the project to advertising for construction. This schedule will be reviewed by the CONSULTANT, and to determine if it meets the objectives of the City. Any adjustments to the schedule will be communicated to the Design Consultant, and to have it align with the project budget costs. The schedule must also account for the community awareness plan/public meeting periods, which coincide with specific intervals of the project development, and as dictated by the City and CONSULTANT.
- b. Budget – Based on the foregoing and approved project schedule, the Design Consultant Project Manager will prepare the project budget for design and construction plan development. The budget will be reviewed by the CONSULTANT to determine if the appropriate level of staffing is assigned; subconsultant team members match the required services; the budget fits in with the anticipated project schedule; and to ensure that the best value and efficiencies are included. If options are anticipated, they may be detailed as OPTIONAL COSTS for the City and CONSULTANT

to further evaluate the benefits of such options. The CONSULTANT will also make sure that unnecessary costs are avoided, to keep the project on budget, and to be proactive with schedule management, so to avoid delays to work toward the completion of the project.

- c. Contract – The City will have provided the Design Consultant Project Manager with the Standard Form of Contract for execution. The contract will contain the details of the project schedule, the budget, and the detailed scope of work, as per the Attachment J, of the Scope of Work for the project, as advertised, and herein refined, based on the review by the City and the CONSULTANT.
- d. Review of the Project Design – It is the intent of the project to follow the FDOT design standards, and the Green Book. The Design Consultant will be presented with all available existing and relevant information that has been previously developed for the conceptual plans of the NW Quadrant. The CONSULTANT will review these parameters with the Design Consultant Team, to ensure the intent of the project's goal are being met, and to navigate for the team the restrictions and controls for the project, since the right-of-way for the corridor has been set and the City has secured the land from the property owner.
- e. Refinements and Observed Issues – Based on the presentation of the selected Design Consultant Team, any observed issues of the conceptual design may require refinements. Should this be the case, the Design Consultant Project Manager will present those issues to the City and CONSULTANT, and they will be reviewed to see if they meet the intent of the project, and if those refinement(s) fall within the design parameters and control area(s) of the project. This may be considered as a feasibility assessment that could require a deeper analysis of operational performances that were set during the conceptual phase development. The City and CONSULTANT will determine, at this time, if any refinement(s) from any perceived observed issues by the Design Consultant Team are warranted to be advanced, and should they present a cost savings, while maximizing value of the project for the City.

TASK 2.0 – DESIGN PHASE

The design phase of the project will consist of all design activities, as detailed in the aforementioned Attachment J, of the Scope of Work for the project, as advertised, and as may be revised by the Design Consultant. These activities will cover the design and construction plans developments, agency coordination, all project/city meetings and coordination, including Community Awareness/Public Meetings, and construction cost estimations.

- a. Design Activity Roadmap – Based upon the project schedule, developed by the Design Consultant Project Manager, and approved by the CONSULTANT, a design activity roadmap, and matrix will be prepared, so all involved stakeholders can follow the project progress. It will be required to be updated, at regular intervals, should project details change during development of the design and construction plans. The CONSULTANT will monitor this design activity roadmap/matrix.
- b. Coordination with Agencies – The project will require interaction with various involved agencies, for specific reviews/approvals of the design, and permitting requirements of the project, including coordination with utility operators within the project corridor. The Design Consultant Project Manager would have prepared/provided a list of all anticipated involved agencies interactions and utility operators for the project, during the Design Planning/Initiation phase. The CONSULTANT will monitor these agencies and utility operators' interactions, frequency of

meetings, and will make certain these meetings are scheduled to match the design activities roadmap/matrix, have the appropriate level of support (staffing; city and/or CONSULTANT members) present to guarantee the efficiencies of the meetings, make certain no delays are created, and that minutes of meetings are prepared and maintained in the project files. If for any reason a delay is uncovered during these agencies' interactions, the CONSULTANT will monitor and enforce with the Design Consultant Project Manager, that corrective actions are taken to minimize any scope creep, and to absorb any slack in the project schedule.

- c. Project Meetings and Coordination – The project will require regular coordination with the City and CONSULTANT, for both design development/construction plans review intervals, including major milestones, such as 30-60-90-percent complete intervals. It is anticipated that the project could require a 24-month period to complete all tasks, up to the bidding of the project. At no less, there will be monthly meetings for the first 6-8 months, and these will also align with monthly invoicing cycles to the City. A status report, and all supporting back-up information will accompany any invoices, and will be reviewed by the CONSULTANT to measure progress of the project, and to determine if that progress is matching the approved project schedule with developed work product materials. After the 6-8 month period, the City and CONSULTANT will evaluate the project's progress, and may alter the meeting frequency.
- d. Community Awareness/Public Meetings – The project will require a community awareness plan/public meeting schedule, as outlined by the Design Consultant Project Manager during the Design Phase, and as required, at specific intervals of the design and construction plans development. The CONSULTANT will monitor this activity and will make certain the Design Consultant Project Manager: prepares well in advance with the City for the meeting(s) location site, advertising, all work product materials which will be required for the meeting, and educates the public in attendance.
- e. Construction Cost Estimates – At intervals that align with the roadway design and construction plans development, the Design Consultant will provide detailed construction cost estimates. The CONSULTANT will monitor and review these estimates with the City. Each estimate will build upon the previous estimates and include any draft project technical specifications for non-standard construction pay items. Should certain project costs seem high to the CONSULTANT, a value engineering assessment will take place between the Design Consultant Project Manager and the CONSULTANT to understand these costs, but also, to make appropriate recommendations/adjustments in the design for efficiencies and to maximize value for the City.

TASK 3.0 – PRE-BID PHASE

The Pre-bid Phase of the project will involve a review of the Final Design and Construction Plans; any and all Utility Agreements; Project Permits, as required by the review agencies; Construction Cost Estimates and Technical Specifications.

- a. Final Design and Construction Plans – The CONSULTANT will review the final design and construction plans. This review will take into account the culmination of the 100-percent design and construction plans development, and a thorough review will occur against all project recorded documentation.

- b. Assist City with Bidding the Project – The CONSULTANT will coordinate with the Design Consultant and City to advance the project to the bid phase. This effort will coordinate, as required, with the City and City Council, for advertising and requirements of the project. A Pre-bid meeting will be required and the CONSULTANT will attend and coordinate with the Design Consultant to make the presentation to perspective bidders.
- c. Review of Bids – The CONSULTANT will coordinate with the Design Consultant and City, to review all bids received. The bids will be reviewed for responsiveness, completeness, and assessment of the bid, as compared to the project pay items, and to differentiate any abnormalities in the costs. The CONSULTANT will coordinate with the Design Consultant to make a recommendation to the City for the Lowest Responsible Bidder, and will attend a City Council meeting, as required, with a Resolution for the Bidder.

Exhibit B

Compensation and Method of Payment

Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I

Date: July 21, 2022

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08

Section 1 Change(s) in Compensation

The compensation the Consultant shall be entitled to receive for providing and performing the supplemented or changed services, tasks or work as set forth and enumerated in the Scope of Professional Services set forth in this Change Order or Supplemental Task Authorization, attached hereto shall be as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
15.00	Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I	\$117,085.00	LS	
TOTAL		\$117,085.00		

Compensation and Method of Payment – Page 2
Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
Phase I

Section 2 Summary of Change(s) in Compensation

Pursuant to and in consideration of the change(s) in the Scope of Professional Services set forth in this Change Order or Supplemental Task Authorization, the compensation the City has previously agreed to pay to the Consultant, as set forth in the Professional Services Agreement, shall be changed to be as follows:

Section/Task Number	Section/Task Name	Compensation in the Basic Agreement	Adjustment(s) by Previous CO or STA Nos.	Adjustment(s) Due to this CO or STA	Summary of Changed Compensation
01	Citywide Traffic Data Collection 2019	\$28,660.00			\$28,660.00
02	Citywide Traffic Data Collection 2020	\$28,750.00			\$28,750.00
03	Phase 1 - Engineering Study of Pelican Landing Parkwa	\$13,690.00			\$13,690.00
04	General Transportation Services	\$19,000.00			\$19,000.00
05	Citywide Traffic Data Collection 2021	\$29,810.00			\$29,810.00
06	General Transportation Services	\$19,000.00			\$19,000.00
07	Citywide Traffic Data Collection 2022	\$38,124.75			\$38,124.75
08	US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I	\$117,085.00			\$117,085.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
TOTAL		\$294,119.75	\$ 0.00	\$ 0.00	\$294,119.75

Exhibit C

Time and Schedule of Performance

Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I

Date: July 21, 2022

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08

Section 1 Change(s) in Time and Schedule of Performance

The time and schedule of completion for the various phases or tasks required to provide and perform the services, tasks or work set forth in this Change Order or Supplemental Task Authorization is as follows:

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and/or Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed
1.00	Design Planning/Initiation	90	90
2.00	Design Phase	520	610
3.00	Pre-Bid Phase	120	730

Time and Schedule of Performance – Page 2
 Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
 Phase I

Section 2 Summary of the Impact of Change(s) in Time and Schedule of Performance on the Overall Project

Pursuant to and in consideration of the changes in the Scope of Professional Services in this Change Order or Supplemental Task Authorization, the time and schedule the City and the Consultant have previously agreed to for all of the work to be done under the Professional Service Agreement shall be changed as follows:

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and/or Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed
1.00	Design Planning/Initiation	90	90
2.00	Design Phase	520	610
3.00	Pre-Bid Phase	120	730

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
Phase I

Date: July 21, 2022

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing the services, tasks or work required under this Change Order or Supplemental Task Authorization:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	none	

EXHIBIT E

Project Guidelines and Criteria

Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest
Phase I

Date: July 21, 2022

☐ Change Order Number: Enter change order number or N/A

☒ Supplemental Task Authorization Number: 08

As a supplement or change to the project guidelines and criteria set forth in the Professional Services Agreement, the City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the services, tasks or work to be provided pursuant to the professional services set forth in this Change Order or Supplemental Task Authorization as follows:

(If none, enter the word "none" in the space below)

Item No. 1

none

**CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08**

McMAHON ASSOCIATES, INC.

PROPOSAL SUMMARY

**MISCELLANEOUS TRAFFIC ENGINEERING SERVICES FOR
CONSULTANT REPRESENTATIVE FOR THE CITY OF BONITA SPRINGS
FOR THE US-41/BONITA BEACH ROAD QUADRANT PLAN -
NORTHWEST PHASE I**

Prepared by:
John S. DePalma, Principal

Date : July 21, 2022



**CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08**

**McMAHON ASSOCIATES, INC.
PROPOSAL SUMMARY**

**MISCELLANEOUS TRAFFIC ENGINEERING SERVICES FOR
CONSULTANT REPRESENTATIVE FOR THE
CITY OF BONITA SPRINGS FOR THE
US-41 / BONITA BEACH ROAD QUADRANT PLAN - NORTHWEST PHASE I**

CONSULTANT - McMAHON ASSOCIATES, INC.

TASK 1.00	DESIGN PLANNING / INITIATION	\$ 11,980.00
TASK 2.00	DESIGN PHASE	\$ 89,905.00
TASK 3.00	PRE-BID PHASE	\$ 15,200.00

TOTAL LUMP SUM FEE	\$117,085.00
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CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08/BSC-19-02-022
McMAHON ASSOCIATES, INC.

STAFFHOUR / FEE ESTIMATE
TASK 1.00 DESIGN PLANNING / INITIATION

TASK NO.	WORK ELEMENT	PRINCIPAL	SENIOR PROJECT MANAGER	SR. PROJ. ENGINEER	PROJECT ENGINEER	SR. PROJ. PLANNER	SR. CADD TECH	PROJECT PLANNER	CADD/ TECH	CLERICAL	TOTAL COST/TASK
	CLASSIFICATION RATE / HOUR	\$215.00	\$180.00	\$150.00	\$100.00	\$120.00	\$95.00	\$90.00	\$85.00	\$65.00	
1.00	Schedule	4								1	
	Budget	4								1	
	Contract	4								1	
	Review of Project Design	10		12						2	
	Refinements and Observed Issues	12		16						1	
	NOTE: Assume 2 mo's; 1-day mtg to Kick-off project, and transfer/review all existing mat'ls										
	TOTAL TASK 1.0	34	0	28	0	0	0	0	0	6	
	TOTAL HOURS/CLASSIFICATION	34.0	0.0	28.0	0.0	0.0	0.0	0.0	0.0	6.0	68.0
	TOTAL DOLLARS	\$7,310.00	\$0.00	\$4,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$390.00	\$11,900.00

CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08/BSC-19-02-022
McMAHON ASSOCIATES, INC.

STAFFHOUR / FEE ESTIMATE
TASK 2.00 DESIGN PHASE

TASK NO.	WORK ELEMENT	PRINCIPAL	SENIOR PROJECT MANAGER	SR. PROJ. ENGINEER	PROJECT ENGINEER	SR. PROJ. PLANNER	SR. CADD TECH	PROJECT PLANNER	CADD/ TECH	CLERICAL	TOTAL COST/TASK
	CLASSIFICATION RATE / HOUR	\$215.00	\$180.00	\$150.00	\$100.00	\$120.00	\$95.00	\$90.00	\$85.00	\$65.00	
2.00	Design Activity Roadmap	4									
	Coordination with Agencies (and Utility Operators)	80	42	64						32	
	NOTE: Assume 16 mtg's for this activity										
	Project Meetings and Coordination	52	54	86						8	
	NOTE: Assume 14 mtg's for this activity										
	Community Awareness / Public Meetings	24								10	
	NOTE: Assume 3 mtg's for this activity; incl City Co.										
	Construction Cost Estimates	20	12	26						6	
	NOTE: Assume 18 mo's										
	TOTAL TASK 2.00	180	108	176	0	0	0	0	0	56	
	TOTAL HOURS/CLASSIFICATION	180.0	108.0	176.0	0.0	0.0	0.0	0.0	0.0	56.0	\$20.0
	TOTAL DOLLARS	\$38,700.00	\$19,440.00	\$26,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,640.00	\$88,180.00

CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08/BSC-19-02-022
McMAHON ASSOCIATES, INC.

STAFFHOUR / FEE ESTIMATE
TASK 3.00 PRE-BID PHASE

TASK NO.	WORK ELEMENT	PRINCIPAL	SENIOR PROJECT MANAGER	SR. PROJ. ENGINEER	PROJECT ENGINEER	SR. PROJ. PLANNER	SR. CADD TECH	PROJECT PLANNER	CADD/ TECH	CLERICAL	TOTAL COST/TASK
	CLASSIFICATION RATE / HOUR	\$215.00	\$180.00	\$150.00	\$100.00	\$120.00	\$95.00	\$90.00	\$85.00	\$65.00	
3.00	Final Design and Construction Plans NOTE: Assume 1 mtg's for this activity	12	8	24						4	
	Assist City with Bidding the Project NOTE: Assume 1 mtg for this activity	12								4	
	Review of Bids NOTE: Assume 1 mtg for this activity	10	4	8						4	
	NOTE: Assume 4 mo's										
	TOTAL TASK 3.00	34	12	32	0	0	0	0	0	12	
	TOTAL HOURS/CLASSIFICATION	34.0	12.0	32.0	0.0	0.0	0.0	0.0	0.0	12.0	90.0
	TOTAL DOLLARS	\$7,310.00	\$2,160.00	\$4,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$780.00	\$15,050.00

**CITY OF BONITA SPRINGS
SERVICE PROVIDER AGREEMENT
MISCELLANEOUS TRAFFIC ENGINEERING SERVICES
CONTRACT NO. CN 17-08/BSC-19-02-022
McMAHON ASSOCIATES, INC.**

ESTIMATE OF DIRECT EXPENSES

TASK 1.00	DESIGN PLANNING / INITIATION		
	DESCRIPTION	UNITS	AMOUNT
	Reproduction/Photocopy Production-misc. @\$0.15/sheet	200	\$30.00
	Mileage @ \$0.625/mi.(on project location) (80 rd trip)	1	\$50.00
	SUB-TOTAL TASK 1.00		\$80.00
TASK 2.00	DESIGN PHASE		
	DESCRIPTION	UNITS	AMOUNT
	Reproduction/Photocopy Production-misc. @\$0.15/sheet	500	\$75.00
	Mileage @ \$0.625/mi.(on project location) (80 rd trip)	33	\$1,650.00
	SUB-TOTAL TASK 2.00		\$1,725.00
TASK 3.00	PRE-BID PHASE		
	DESCRIPTION	UNITS	AMOUNT
	Reproduction/Photocopy Production-misc. @\$0.15/sheet	800	\$120.00
	Mileage @ \$0.625/mi.(on project location) (80 rd trip)	3	\$150.00
	SUB-TOTAL TASK 3.00		\$150.00
	TOTAL LUMP SUM FEE		\$1,955.00

ATTACHMENT

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Supplemental Task Authorization for Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I.
2. This sworn statement is submitted by McMahon Associates, Inc. whose business [Name of entity submitting sworn statement]
address is 9160 Forum Corporate Parkway, Suite 305, Ft. Myers, FL 33905 and (if applicable) its Federal Employer Identification Number (FEIN) is 23-2462387 (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____).
3. My name is John S. DePalma and my relationship to the above is _____
[Please print name of individual signing]
Principal
4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.
5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.
6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.
7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.
8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

☒ **Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)**

- [] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

☐ **Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for \$1 Million or more)**

- [] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

☐ **Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for \$1 Million or more)**

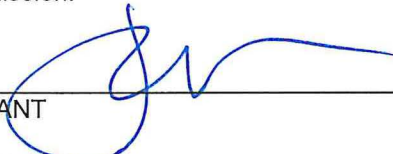
- [] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

☐ **Business Operations in Cuba or Syria (bid, proposal or contract renewal for \$1 Million or more)**

- [] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.



AFFIANT
Principal

Title

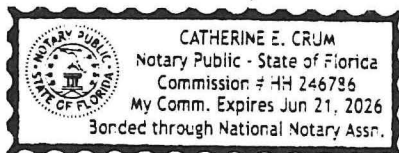
John S. DePalma

Typed Name of AFFIANT

STATE OF FLORIDA COUNTY OF PALM BEACH

The foregoing instrument was executed before me this 21st day of JULY, 2022,
by JOHN S. DEPALMA as PRINCIPAL of
MCMATHON ASSOCIATES, INC., who personally swore or affirmed that he/she is authorized to
execute this document and thereby bind the Corporation, and who is personally known to me OR has
produced N/A as identification.

(stamp)





NOTARY PUBLIC, State of FLORIDA

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: <http://www.sbafla.com/fsb/> > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:

☐ entity is **NOT** on list ☐ entity is on list

Scrutinized Companies with Activities in Sudan List:

☐ entity is **NOT** on list ☐ entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

☐ entity is **NOT** on list ☐ entity is on list

Business Operations in Cuba or Syria:

☐ entity is **NOT** on list ☐ entity is on list

Verified by: _____
Print Name

Date: _____

EXHIBIT F

**Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion**

Vendor Covered Transactions

- (1) The prospective vendor certifies, by submission of this Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR:

McMahon Associates, Inc.

Company Name

021123665

DUNS Number

Signature

Date

John DePalma

Print Name

2090 Palm Beach Lakes Blvd., #400

Street Address

West Palm Beach

FL

33409

City

State

Zip Code

For City of Bonita Springs use only

To access the debarment search: <https://www.sam.gov/SAM/> > Search Records tab > Enter DUNS number > Click Search

Company: ☐ is debarred ☐ is not debarred

Verified by:

Name

Date



TRANSPORTATION ENGINEERS & PLANNERS

McMahon Associates, Inc.
2090 Palm Beach Lakes Boulevard, Suite 400
West Palm Beach, FL 33409
P. 561.840.8650
mcmahonassociates.com

July 21, 2022

VIA E-MAIL

Mr. Matt Feeney, Assistant City Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**RE: Miscellaneous Traffic Engineering Services, CN 17-08
 Scope of Professional Services
 STA No. 08: Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road
 Quadrant Plan – Northwest Phase I
 McMahon Project No. H18282.08**

Dear Mr. Feeney:

At the request of the City of Bonita Springs, McMahon Associates, Inc. provides this Supplemental Task Authorization No. 08: "Consultant Representative for the City of Bonita Springs for the US-41/Bonita Beach Road Quadrant Plan – Northwest Phase I" for approval and issuance of an agreement.

If you should have any questions, please feel free to contact us.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John S. DePalma', is written over a circular blue ink stamp.

John S. DePalma, Principal

JSD/cec
Attachments

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 22-09-149
September 7, 2022

REQUESTED MOTION: Adopt Resolution accepting the resignation of Jeff Lewin from the City of Bonita Springs Local Planning Agency.

REQUESTOR: Debbie Filipek, City Clerk

AGENDA: Consent

STRATEGIC PRIORITY: N/A

BACKGROUND:

Board Member Jeff Lewin (District 3) has notified staff of his resignation from the City of Bonita Springs Local Planning Agency effective August 31, 2022.

Land Development Code Section 4.85 states “The Board shall be comprised of 7 members, who shall be legal residents of the City, appointed by the Mayor, with the advice and consent of City Council.” There is currently one application on file. Staff will advertise the vacancy.

The current Board Members are: Robert Lombardo (District 2), Don Colapietro (District 1), Jeffery Maturo (District 6), Steve Lohan (District 5), Robert Bornstein (District 6)

STAFF RECOMMENDATION: Adopt Resolution

ATTACHMENTS:

1. Resolution
-

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 22 -

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; ACCEPTING THE RESIGNATION OF ONE MEMBER FROM THE CITY OF BONITA SPRINGS LOCAL PLANNING AGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Land Development Code Section 4.85 states that the Planning Commission (LPA) shall be comprised of seven members, who shall be legal residents of the City, appointed by the Mayor, with the advice and consent of the City Council; and

WHEREAS, Board Member Jeff Lewin submitted his resignation from the Local Planning Agency effective August 31, 2022.

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

1. The resignation of Jeff Lewin from the Local Planning Agency is hereby accepted, with regret.
2. Effective date. This Resolution shall become effective immediately upon its adoption by City Council.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 7th day of September, 2022.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Quaremba
Purdon
Carr
Steinmeyer

Corrie
Gibson
Forbes

Date filed with City Clerk: _____

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 22-09-151
September 7, 2022

REQUESTED MOTION: Approve Thirteenth Addendum to Second Agreement for Law Enforcement Services

REQUESTOR: Carly Sanseverino, Staff Attorney

AGENDA: Consent

STRATEGIC PRIORITY:

BACKGROUND:

On June 16, 2021, the City Council approved the Twelfth Addendum to the Second Agreement for Enhanced Law Enforcement Services at an amount of \$2,002,554.00 which included all vehicles and equipment, two sergeants, and fifteen deputies (including a detective).

The Second Agreement provides for annual changes by addendum as to the cost for providing community policing. The 2022-2023 cost to the City is \$2,182,784.00, which includes all vehicles and equipment, two sergeants, and fifteen deputies (including a detective).

The proposed draft FY22-23 budget provides the funding for this Thirteenth Addendum, as well as funding for two additional deputies. After final approval of the budget, LCSO will provide an addendum to include the two additional deputies to start in April 2023.

STAFF RECOMMENDATION: Approve the agreement.

ATTACHMENTS:

1. Thirteenth Addendum to Second Agreement for Enhanced Law Enforcement Services
2. Second Agreement to the Interlocal Agreement (2010)

REVIEWERS:

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

Council Action: Approved __ Denied __ Deferred __ Other _____

THIRTEENTH ADDENDUM TO SECOND AGREEMENT

**BY AND BETWEEN CARMINE MARCENO, SHERIFF OF LEE COUNTY,
FLORIDA AND THE CITY OF BONITA SPRINGS FOR
ENHANCED LAW ENFORCEMENT SERVICES**

COMES NOW the Parties hereto and enter into this Thirteenth Addendum to the Second Agreement, (the Agreement), by and between Carmine Marceno, Sheriff, Lee County, Florida and the City of Bonita Springs, Florida for enhanced law enforcement services dated October 1, 2010, and agree as follows:

WHEREAS, the Parties hereto may amend this Agreement pursuant to Article XXI (20.1), of the Agreement;

WHEREAS, the Parties hereto desire to amend the Agreement in the following manner;

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, which the Parties hereto deem and acknowledge sufficient consideration, **the Parties agree as follows:**

1. The Recitals above are adopted and incorporated herein as if fully restated.
2. Exhibit "A" of the Agreement is deleted in its entirety and replaced with the following:

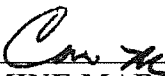
FISCAL YEAR 22/23

- a. Funding for community policing is established at an amount not to exceed \$2,182,784.00. The funding is to pay for 2 Sergeants and 15 Deputies.
 - b. Amount is effective October 1, 2022, through September 30, 2023.
 - c. Vehicles, rental vehicles, and all equipment are included into the cost for Deputies and Sergeants.
3. All other terms and conditions of the Agreement, as modified and not otherwise inconsistent with this addendum, shall remain in full force and effect.

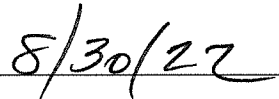
IN WITNESS WHEREOF, the Parties hereto have caused their respective agents to execute this instrument on their behalf, on the dates set forth below.

THIRTEENTH ADDENDUM TO SECOND AGREEMENT

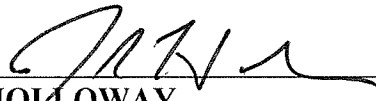
SHERIFF OF LEE COUNTY



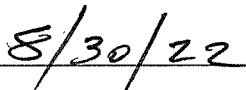
CARMINE MARCENO, SHERIFF



Date



JOHN HOLLOWAY
UNDERSHERIFF
Approved as to form



Date

CITY OF BONITA SPRINGS

Attest:

RICK STEINMEYER, MAYOR

DEBBIE FILIPEK, CITY CLERK

APPROVED AS TO LEGAL FORM:

DEREK P. ROONEY, CITY ATTORNEY

SECOND
AGREEMENT

BY AND BETWEEN
MIKE SCOTT, LCSO OF LEE COUNTY, FLORIDA AND
THE CITY OF BONITA SPRINGS FOR
ENHANCED LAW ENFORCEMENT SERVICES

THIS AGREEMENT, by and between the CITY OF BONITA SPRINGS, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "CITY," and Mike Scott, Sheriff of Lee County, Florida, hereinafter referred to collectively as "LCSO."

W I T N E S S E T H:

WHEREAS, the CITY is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, LCSO and CITY previously agreed on a basic services agreement with a continuing high level of professional police service, and the CITY is desirous of enhancing such services upon the terms and conditions hereinafter set forth; and

WHEREAS, CITY is desirous of enhancing daily police services above and beyond basic services already rendered through contractual relationship with LCSO.

NOW THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the respective meanings hereinafter set forth:

1.1 **Agreement** shall mean this Agreement for Law Enforcement Services between the CITY and LCSO. This Agreement does not replace or supplant the basic services provided by the Sheriff but is to provide enhanced services above and beyond the basic services provided through general ad valorem revenues and other regular funding. However, nothing contained within this definition should prohibit Community Outreach Program (COPS) funding if available.

1.2 LCSO shall mean the duly elected and qualified Sheriff of Lee County, Florida.

1.3 LCSO'S Address shall mean Lee County Sheriff's Office, 14750 Six Mile Cypress Parkway, Ft. Myers FL 33912, (239) 477-1200.

1.4 CITY shall mean the City of Bonita Springs, Florida, a municipal corporation organized and existing under the laws of the State of Florida and located within the boundaries of Lee County, Florida.

1.5 CITY'S Address shall mean 9101 Bonita Beach Road, Bonita Springs FL 34135, (239) 949-6262.

1.6 CITY Boundaries shall mean the area within the municipal boundaries of the CITY.

1.7 City Manager shall mean the duly appointed and validly existing City Manager of the CITY. In the absence of the City Manager, the person acting in the capacity of City Manager shall have the same authority as that of the City Manager.

1.8 Deputy Sheriff shall mean an employee who is appointed by the Sheriff in accordance with Fla. Stat. 30.07 and who has executed any necessary oath which is required by law. This position consists of shift related duties which includes: arrest and citation of violators, crime prevention, traffic control, courtroom testimony, community policing, high visibility patrol, and others as determined by LCSO.

1.9 District Commander shall mean the individual appointed under Article XVI who is responsible for all employees and activities of the Bonita Springs Patrol Zone. The district commander shall hold the rank of Deputy Sheriff Captain. The duties of the district commander include compliance with provisions of this contract for law enforcement service, serve as liaison between the CITY and LCSO, and insure the maintenance of effective morale, discipline, and law enforcement service.

1.10 Patrol Unit shall mean one (1) marked car which shall be manned by one (1) Uniformed Officer and containing all standard support equipment and who is assigned to a Patrol within the City of Bonita Springs. Any patrol unit purchased by the CITY shall prominently display the City of Bonita Springs official seal and on the vehicle's exterior the legend "paid for by the City of Bonita Springs" in letters at least two (2) inches in height, to be paid for by the CITY.

1.11 Patrol Zone is the incorporated boundaries of the CITY that is part of the South District.

1.12 Salaries shall include wages, employer expenses (FICA), and employee benefits including, but not limited to, retirement benefits, health insurance benefits, workers compensation, vacation, compensatory time, and sick leave benefits.

1.13 Sworn Personnel shall mean any appointed deputy of the Sheriff, irrespective of the rank (i.e. Deputy Sheriff Sergeant, Deputy Sheriff Lieutenant, Deputy Sheriff Captain).

1.14 Uniformed Deputy means a Deputy Sheriff employed by LCSO who wears a LCSO uniform.

ARTICLE II

TERM

2.1 This Service Agreement shall remain in full force and effect commencing October 1, 2010 through September 30, 2011, the present term for Sheriff Mike Scott, all dates inclusive, conditioned upon the party's agreement as to the consideration to be paid by the City in each applicable fiscal year.

2.2 The CITY shall have the option to extend the Term for four (4) additional one (1) year terms, upon the same terms and conditions contained herein, except that the Consideration payable hereunder shall be subject to mutual agreement.

2.3 Either party may terminate this Service Agreement for any reason by giving no less than ninety (90) days prior written notice to the other party.

2.4 In the event of termination, both parties shall render such aid, coordination, and cooperation that might be required for an expeditious and efficient termination of service.

ARTICLE III

MANNER OF PERFORMANCE OF SERVICES

3.1 It is the intent of LCSO to provide to the CITY it's current, enhancing existing competent professional police protection within and throughout the corporate limits of the CITY as set forth in Exhibit A to this Agreement.

3.2 In recognition of the CITY's need to be informed of LCSO'S activities, LCSO'S District Commander and the City Manager will develop a mutually agreed upon reporting format(s) and reporting period(s), whereby LCSO will report its activities to the

City Manager. At any time during the term of this Agreement, the City Manager shall have the right to make reasonable modifications to the reporting format(s) and reporting period(s).

3.3 LCSO will ensure the courtesy and professional demeanor of the assigned Deputies through internal policies and staff inspections, in-service training, and diversity training.

ARTICLE IV

STAFFING STRUCTURE

4.1 Commencing October 1, 2010, the enhanced staffing structure of deputies of the Bonita Springs Patrol Zone in the South District shall be as set forth in Exhibit A attached hereto.

4.2 It is the responsibility of the District Commander or designee, in consultation with the City Manager, to properly assign personnel to adequately provide enhanced law enforcement services in the Bonita Springs Patrol Zone, pursuant to this Agreement.

ARTICLE V

PATROL UNITS

5.1 Each Uniformed Deputy Sheriff patrolling the Patrol Zone shall be assigned by the District Commander and work scheduled time, not to exceed forty-two hours per week, excepting holidays, overtime, off-duty detail, vacation leave, required training, court appearances, authorized sick leave, and such other absences as may be authorized by the SHERIFF or his designee.

5.2 The parties recognize that a law enforcement agency requires flexibility in order to meet society's challenge to combat crime and other social conditions. Therefore, the District Commander or his designee shall have the discretion to determine patrol staffing levels to provide adequate police services to the CITY subject to the requirements of paragraph 5.1. The LCSO recognizes that the Agreement is for enhanced services and nothing in this paragraph shall be construed as to replace community policing activities unless the circumstances warrant the modification because of lack of regular and basic patrol staffing levels in Bonita Springs and the immediate adjacent areas. Use of this discretion should be the exception and not the rule.

5.3 A professional level of service shall be provided by the patrol services contemplated by this Agreement. This professional level of service shall be in accordance with applicable laws and accepted police practices, including LCSO policies and procedures.

5.4 These patrol services shall be supervised within the discretion of the on-duty uniform patrol supervisor, with the understanding that the patrol services are enhanced services to provide community policing.

5.5 LCSO, through its Deputy Sheriffs assigned to the City of Bonita Springs, at the request of the City Manager, will provide additional enhanced services as agreed upon with the District Commander.

ARTICLE VI

CITY COUNCIL MEETINGS

6.1 At the request of the City Manager and in conformity with paragraph 5.1, one (1) Deputy Sheriff shall be present for the purpose of maintaining order at each regular or special City Council meeting during the regular shift of attending deputy.

ARTICLE VII

EMPLOYMENT RESPONSIBILITY

7.1 Any employees utilized by LCSO to fulfill the terms and conditions of this Agreement shall be deemed as employees of LCSO, not of the CITY.

7.2 Accordingly, the CITY shall not be responsible for or assume any liability for any employee's salaries, wages, or other compensation, contributions to pension funds, insurance premiums, workers compensation funds (Chapter 441, Florida Statutes 2002), vacation, compensatory time, sick leave benefits or any other amenities of employment to any LCSO Personnel performing services, duties and responsibilities hereunder for the benefit of said CITY and the residents thereof or any other liabilities whatsoever.

7.3 Further, unless otherwise specifically provided to the contrary herein, the CITY shall not be liable for compensation, contribution, indemnity to LCSO or the employees thereof for any injury or illness, of any kind whatsoever, arising out of such employment and the performance of the service, duties, and responsibilities contemplated herein.

ARTICLE VIII

EMPLOYMENT: RIGHT OF CONTROL

8.1 LCSO shall have and maintain sole responsibility and control over the rendition of services, training, standards of performance, discipline of personnel, and other matters incident to the performance of its services, duties, and responsibilities

described and contemplated herein, provided said control does not result in a permanent reduction in the staffing levels as provided in Article IV.

8.2 The parties acknowledge that it is important for the CITY to have LCSO personnel who are acquainted with the general make-up of the CITY including its geography; its industrial, business, and residential composition; and its law enforcement issues.

ARTICLE IX

EMPLOYMENT: AUTHORITY TO ACT

9.1 The CITY recognizes that LCSO shall be required to appoint employees as deputy sheriffs to act within the City for the purpose of enforcing this Agreement. The LCSO will endeavor to maintain units as described in Exhibit A attached hereto in the Bonita Springs Patrol Zone.

9.2 The CITY does hereby vest in any LCSO employee, who is appointed by the Sheriff as a deputy sheriff and certified as a law enforcement officer within Chapter 943, Florida Statutes 2002, the police powers which are necessary to implement and carry forth the services, duties, and responsibilities imposed upon LCSO by this Agreement, for the sole and limited purpose of giving official and lawful status and validity to the performance thereof by such sworn officers. Every sworn officer of LCSO so empowered hereby and engaged in the performance of the services, duties, and responsibilities described and contemplated herein shall be deemed to be a sworn officer of the CITY while performing such services, duties, and responsibilities which constitute municipal functions and are within the scope of this Service Agreement.

9.3 Accordingly, such sworn officers of LCSO are hereby vested with the power to enforce the ordinances of the CITY, to make arrests incident to the enforcement thereof, and to do such other things and perform such other acts as are necessary with respect thereto.

ARTICLE X

CONSIDERATION

10.1 The CITY agrees to pay LCSO, in consideration for the services described herein, for the fiscal year 2010/2011, the sum set forth in Exhibit "A" attached hereto. Exhibit "A" shall be amended from year to year as made necessary by the increased costs and expenses of staffing and maintaining a Deputy Sheriff.

10.2 The consideration payable by the CITY for fiscal year 2010/2011 shall be subject to an annual percentage adjustment, not to exceed a ten percent (10%) increase of the contractual consideration for the preceding year. Such increases shall

only be approved after LCSO has provided detailed financial back-up justifying the increase to the CITY.

10.3 LCSO shall have the right to temporarily fill any vacancy within the Bonita Springs District, provided the vacant position is filled by a LCSO employee that possesses skills, training and experience at least equivalent to the absent Bonita Springs Patrol Zone Deputy.

10.4 The consideration recited herein constitutes the entire consideration to be paid hereunder and upon the payment thereof, in the manner and at the times described herein, the CITY shall have no further monetary obligations to LCSO or any third party providing services described in this Service Agreement.

10.5 In the event that the CITY desires to add additional deputies, this agreement shall be provided for in writing, signed by both parties and added hereto as an addendum.

10.6 Capital equipment associated with the patrol units and the Bonita substation will be replaced on an as needed basis based on the maintenance costs and factors as deemed necessary by LCSO.

ARTICLE XI

ADDITIONAL SERVICES

11.1 The City Manager may request additional law enforcement services (i.e. K-9, motorcycles, foot patrol, special details) necessary to the CITY during the tenure of this Agreement.

11.2 LCSO agrees to make every reasonable effort to provide these services to the CITY.

ARTICLE XII

AUDIT OF RECORDS

12.1 LCSO shall maintain an accurate record of all LCSO personnel employed in the Bonita Springs Patrol Zone, and their hours of actual employment. Upon request of the City Manager, LCSO agrees to provide the CITY with payroll records concerning hours of actual employment for LCSO'S Bonita Springs District personnel.

12.2 LCSO agrees to provide for inspection and audit any other financial records relating to this Agreement, subject to public records exemptions.

ARTICLE XIII

FINES, FORFEITURES; PAYMENT

13.1 All law enforcement education funds levied and collected by the Clerk of the Court pursuant to Section 943.25, Florida Statutes, may be used by the LCSO for the law enforcement education purposes authorized in said Statutes. Apart from such funds, LCSO shall have no claim or right to any other monies or things of value which the CITY receives or may hereinafter receive by way of entitlement programs, grants or otherwise in connection with law enforcement activities.

13.2 It is hereby acknowledged between the CITY and LCSO that on occasion LCSO may receive equipment from the CITY pursuant to a grant or some other funding device which may be utilized at the sole discretion of the CITY. Prior to the purchase of any such equipment, the City Manager and District Commander shall mutually agree, in writing, to the specifications, maintenance responsibilities, and disposition procedures related to such equipment. In all cases, LCSO shall be responsible for any and all repairs or replacements necessitated by LCSO's abuse or neglect of the equipment.

ARTICLE XIV

DISTRICT COMMANDER

14.1 The District Commander shall, among other specified duties, act as liaison between the CITY and LCSO.

14.2 The parties hereby acknowledge and agree that LCSO retains the right to discipline and remove from office the District Commander or any Deputy Sheriff.

ARTICLE XV

INSURANCE

15.1 LCSO shall be self insured or maintain insurance coverage for the liabilities assumed by LCSO under this Agreement. The insurance coverage shall be in the amounts hereinafter described:

General Liability	\$100,000/200,000.00
Automobile Liability	\$100,000/200,000.00

15.2 LCSO shall maintain the respective coverage throughout the term of this Service Agreement, as the same may be extended in accordance with the provisions hereof.

15.3 LCSO shall provide CITY with adequate documentation concerning the coverage required hereunder, in order that the CITY, through the office of the City Clerk, may keep such documentation on file for the benefit of the public and inspection of the citizenry of CITY.

ARTICLE XVI

HOLD HARMLESS

16.1 Each party (indemnitor) hereby shall to the extent permitted by law indemnify from any liability and hold harmless the other party (indemnitee), its employees, agents, or servants against liability arising from any actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, brought against the indemnitee its employees, agents, and servants as a result of the indemnitor, its employees, agents, or servants negligent acts or negligent omissions, or willful misconduct in the performance of its obligations under this Agreement.

16.2 If the indemnitee defends any actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, directly or approximately caused by the negligent acts or negligent omissions or willful misconduct of indemnitor, its agents, servants, or employees, indemnitor agrees to reimburse the indemnitee for all expenses, attorneys' fees, and court costs incurred in defending such actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands.

16.3 Notwithstanding anything to the contrary contained herein, LCSO and the CITY shall, at all times, be entitled to the benefits of sovereign immunity as provided in Section 768.28, Florida Statutes, and common law. Nothing contained in this Agreement to the contrary shall be construed as a waiver of sovereign immunity.

ARTICLE XVII

INDEPENDENT CONTRACTOR

17.1 LCSO, for the purposes of this Service Agreement, is and shall remain an independent contractor; provided, however, such independent contractor status shall not diminish the power and authority vested in LCSO and its sworn officers pursuant to Article XI.

ARTICLE XVIII

AUTHORITY TO EXECUTE; NO CONFLICT CREATED

18.1 The Sheriff, pursuant to the powers under Article VIII of the Constitution of the State of Florida and the Statutes of the State of Florida, hereby represents that full power and authority exists to execute this Service Agreement. This includes the following:

- (a) His making and execution hereof shall create a legal obligation on the part of the Sheriff's Office of Lee County, Florida.
- (b) The same shall be enforceable by the CITY according and to the extent of the provisions hereof.

Nothing herein contained or no obligation on the part of LCSO to be performed hereunder shall in anyway be contrary to or in contravention of any policy of insurance or surety bond required of LCSO pursuant to the Laws of the State of Florida.

18.2 The Mayor and City Clerk, by their respective executions hereof, do each represent the following to LCSO:

- (a) They collectively have full power and authority to make and execute this Service Agreement on behalf of the City of Bonita Springs, pursuant to the Resolution of the City Council of CITY.
- (b) Nothing herein contained is in any way contrary to or in contravention of the Charter of the City of Bonita Springs or the Laws of the State of Florida.

ARTICLE XIX

NOTICE

19.1 All notices required hereunder shall be by regular U.S. Mail and or facsimile, and any notice required hereunder shall be addressed to the party intended to receive same at the following addresses:

CITY: City Manager
City Hall
City of Bonita Springs

9101 Bonita Beach Road
Bonita Springs, Florida 34135

c/o City Attorney
City Hall
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

LCSO: Sheriff of Lee County
Lee County Sheriff's Office
14750 Six Mile Cypress Parkway
Fort Myers, Florida 33912

Legal Director
Lee County Sheriff's Office
14750 Six Mile Cypress Parkway
Fort Myers, Florida 33912

ARTICLE XX

NON-ASSIGNABILITY

LCSO shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon the written consent of the City Council of the CITY, which consent must be evidenced by a duly passed Resolution.

ARTICLE XXI

ENTIRE AGREEMENT; AMENDMENT

20.1 The parties acknowledge, one to another, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

ARTICLE XXII

BINDING EFFECT

21.1 This Agreement shall inure to the benefit of and be binding upon the respective parties' successors.

IN WITNESS WHEREOF, the parties hereto have caused their respective agents to execute this instrument on their behalf, at the times set forth below:

SHERIFF OF LEE COUNTY



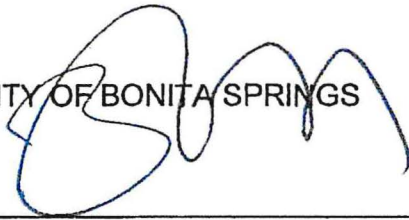
MIKE SCOTT

9/20/10

Date

BY: 

BARRY R. HILLMYER
Legal Advisor, LCSO



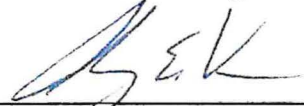
CITY OF BONITA SPRINGS
BEN L. NELSON, JR., MAYOR

9-16-10

Date

ATTEST:


DIANNE LYNN, CITY CLERK

Approved as to form and legal sufficiency
BY: 

AUDREY E. VANCE, CITY ATTORNEY

Approved as to form and legal
sufficiency subject to execution
By the parties:

BONITA CONTRACT

EXHIBIT "A" FISCAL YEAR 10/11

Full Year Funding		unit	LS
Deputies	14	\$ 80,639.00	\$ 1,128,946.00
Sergeants	2	\$ 107,108.00	\$ 214,216.00
Deputy/SRO	0	\$ -	\$ -
Bonita Sub Station	1	\$ 264,673.00	\$ 264,673.00
Rental Vehicles	2	\$ 7,100.00	\$ 14,200.00
TOTAL FY 2010/2011			\$ 1,622,035.00

BONITA CONTRACT

EXHIBIT "A"
FISCAL YEAR 11/12

Description	Unit	Cost per Unit	Extended Cost
Deputies	14	\$80,639.00	\$1,128,946.00
Sergeants	2	\$107,108.00	\$214,216.00
Deputy/SRO	0	-	-
Bonita Sub Station	1	\$264,673.00	\$264,673.00
Rental Vehicles	2	\$7,100.00	\$14,200.00
New Vehicles	3 or 4	Cost TBD	NTE \$80,000.00
Grand Total			\$1,702,035.00



City Council Chambers
9101 Bonita Beach Road
Bonita Springs, Florida 34135

CITY COUNCIL BUDGET MEETING MINUTES

July 20, 2022
5:30 p.m.

1. Call to Order

Mayor Rick Steinmeyer called the meeting to order at 5:30 p.m.

2. Pledge of Allegiance

Mayor Steinmeyer led in the Pledge of Allegiance.

3. Roll Call

Mayor Steinmeyer and all Council Members were in attendance, with Mike Gibson participating via phone.

Council Member Fred Forbes motioned approval of Council Member Gibson participating via telephone; Council Member Jesse Purdon seconded; and the motion unanimously passed.

4. Public Comment

Ron George commented on the budgeting for the two additional deputies and asked that Council ensure there is extra coverage for Hickory Island and Bonita Beach.

Alex Grantt addressed the Strategic Priorities and suggested the addition of an "Environmental Natural Resources Protections Department."

5. Review of Adopted Strategic Priorities

City Manager Hunter introduced this item stating that these have been the City's strategic priorities since approximately 2018. Council Member Quaremba suggested moving strategic priority #5 "Community Aesthetics," up to #3 with the intent to have staff expedite some of the projects that the City has planned. Council Member Purdon suggested moving both "Environmental Protection" and "Community Aesthetics" up one, with "Strengthen City Finances" moving to #5.

Council Member Corrie requested that staff provide a depiction of budget expenditures for each strategic priority. Council agreed to the City Manager's suggestion to start with the Capital Improvements budget.

6. Overview of Proposed Annual Operating Budget for FY22-23

Lisa Roberson, Finance Director, next provided a PowerPoint presentation on the preliminary draft budget (copy in Clerk's file).

7. General Fund Budget Requests Above Continuation Budget

Council Member Purdon addressed increasing the budget for “Celebrate Bonita” and discussion was held, with Council consensus to budget \$65,000 for next year’s event.

Council Member Purdon next addressed LCSO and the requested two additional deputies. Captain Blake Lee was present to address the Council. Council Member Purdon requested staff research municipalities that are comparable in population and the number of deputies for each. He would like to consider the City going from two to four deputies in the next year.

Mayor Steinmeyer requested an explanation of the Thor Guard Lightning Alarm. Nicole Perino, Parks & Recreation Director, explained that it is a system that the City currently has in place at multiple park locations and that the current equipment is at end of life and due for upgrades in order to function properly.

8. Presentation of Preliminary Capital Improvement Plan

9. Mayor and Council Discussion:

Council consensus to move forward with a first reading for Communications Service Tax and Franchise Fee Ordinances on August 3, 2022, as well as a preliminary discussion on the stormwater utility assessment.

Council Member Forbes addressed a request from the Downtown Business Alliance for \$7,500 for the development of marketing materials. Council Member Purdon suggested that if Council desires to contribute to the initiative, then the City should lead the procurement process, but he feels it may be premature at this time.

Council Member Quaremba informed Council of a discussion she had with the City Manager about creative wayfinding signs, which is part of the existing contract with Stantec - to do placemaking, wayfinding, and gateway signs. The end result will be a master plan, then from there Council can direct Staff on priorities.

Council Member Quaremba next requested for staff to initiate a study regarding the potential use of the right-of-way behind Maria’s next to the Wonder Gardens. City Manager Hunter stated that staff can provide Council with a CIP budget to initiate a long-range planning project for a network road for connectivity. She explained that staff could engage an engineering firm to conduct a preliminary study.

Council Member Quaremba next suggested that they formally extend our vision and planning for the City-owned property in front of the library and integrate it with other projects in the area. City Manager Hunter stated funds were allocated in the CIP for a master plan for that site, and that DPZ is creating concepts for Council’s consideration.

Council Member Quaremba next addressed the Sun Trail, as the City paid for a concept report, and there is a need to have a discussion regarding alternatives. Lastly, she feels that Council needs to decide what to do with the Goodbread Grocery building.

At the request of the City Manager Hunter, Council provided direction to place an additional \$1,000,000 in the City's hurricane reserves and direction for Staff to provide possible general government expenses for the funds received under the American Rescue Plan.

10. Public Comment: None

11. Adjournment

There being no further items to discuss, the meeting adjourned at 6:56 P.M.

Respectfully submitted,

Debra Filipek, City Clerk

APPROVED:

CITY COUNCIL

Date: _____

AUTHENTICATED:

Mayor Rick Steinmeyer



City Council Chambers
9101 Bonita Beach Road
Bonita Springs, Florida 34135

CITY COUNCIL MEETING MINUTES

August 3, 2022
5:30 p.m.

1. Call to Order:

Mayor Rick Steinmeyer called the meeting to order at 5:30 P.M.

2. Invocation:

Pastor Chris Mueller, with Legacy Church, furnished the invocation.

3. Pledge of Allegiance

Mayor Steinmeyer 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

Ron George addressed Agenda Item 13.C regarding the millage rate. He also feels there's not enough information to move forward with the lease for Imperial Crossing.

Dwight Esmon asked that Council postpone any vote on the Barron Collier project at this time, and he spoke in support of both the stormwater utility fee and the millage rate remaining the same.

Barbara Ogle supports the stormwater assessment fee and the millage rate remaining the same. She also asked that Council not move forward with the Barron Collier project until more information is obtained.

Alex Grantt commented regarding the Imperial Crossing project and spoke of concerns with any development on the site due to flooding and soil conditions.

Gary Price spoke against the approval of Agenda Item 10. F., regarding the mobile food vendor, which he feels will set a dangerous precedent.

Kyle Moran spoke in support of moving forward with the Barron Collier project.

8. Zoning and Land Use Items:

- A. (SECOND READING AND PUBLIC HEARING) A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST TO REZONE 20.99± ACRES FROM COMMERCIAL PLANNED DEVELOPMENT (CPD) TO COMMERCIAL PLANNED DEVELOPMENT/ RESIDENTIAL PLANNED DEVELOPMENT (CPD/RPD) TO ALLOW FOR A MAXIMUM OF 252 MULTI-FAMILY DWELLING UNITS, INCLUDING BONUS DENSITY UNITS, AND UP TO 10,000 SQUARE FEET OF COMMERCIAL USE AT THE NORTHEAST INTERSECTION OF BONITA BEACH ROAD AND I-75, BONITA SPRINGS, FLORIDA, 34135; PROVIDING FOR AN EFFECTIVE DATE, AND CONSIDERATION OF A BONUS DENSITY AGREEMENT FOR THE PROPOSED PROJECT. (Green Sheet No. 22-08-125)

City Attorney Derek Rooney read the title of the Zoning Ordinance into the record and placed all witnesses under oath. Mary Zizzo, Community Development, provided a brief overview, noting that Staff has recommended approval with conditions.

Wayne Arnold, with Q. Grady Minor, representing the Applicant, provided a PowerPoint presentation (copy in Clerk's file) to present their case and the Bonus Density Agreement. City Attorney Rooney explained the circumstances surrounding the deviation request for the Bonus Density Agreement, which will allow the Applicant to make the required contribution payment at the time of permitting.

Council Member Laura Carr motioned to approve the Zoning Ordinance; Council Member Fred Forbes seconded.

No public comments were made.

The motion carried unanimously. **ADOPTED ZONING ORDINANCE NO. 22-04**

Council Member Amy Quaremba motioned approval of the Bonus Density Agreement, as revised; Council Member Carr seconded; and the motion carried unanimously.

9. Proclamations and Presentations: No items.

10. Consent Agenda:

Council Member Mike Gibson requested item "F" be pulled.

Council Member Carr motioned to approve the remainder of the Consent Agenda, with a discussion on Item D. and pulling F.; Council Member Quaremba seconded; and the motion carried unanimously.

- A. Approve the Interlocal Agreement between Lee County and the City of Bonita Springs for Implementation of the Hazardous Waste Ordinance. (Green Sheet No. 22-08-113)
- B. Approve Proposal from Ajax Paving Industries of Florida, LLC to restripe four (4) roadway areas within Bonita Springs in the amount of \$178,230.90. (green Sheet No. 22-08-114)
- C. Approve Change Order No. 1 to Supplemental Task Authorization No. 3 for performance specifications of eight bridge structures within the City by KCI Technologies, Inc. in the amount of \$98,280.00. (Green Sheet No. 22-08-120)
- D. Authorize the City Manager to sign the partnership agreement between the City of Bonita Springs and the YMCA of Southwest Florida for an Afterschool program for the 2022-2023 school year as well as the 2023 Summer Camp programs, which will both be held at the Bonita Springs Recreation Center. (Green Sheet No. 22-08-121)

Angel Cerritos, with the YMCA of Southwest Florida, at the request of Council, addressed their relationship with the City, as well as the Summer Camp and after school programs.

- E. Adopt a Resolution accepting the resignation of Bob Gillette from the City of Bonita Springs Veterans Advisory Board (Green Sheet No. 22-08-122) **ADOPTED RESOLUTION NO. 22-50**
- F. Review and approve a request for a mobile food vendor location, pursuant to Subdivision III of Division 37 of Chapter 4: Zoning, of the Bonita Springs Land Development Code. (Green Sheet No. 22-08-123)

Council Member Gibson requested that Community Development address concerns raised during Public Comment. Mike Fiigon, Community Development, and City Attorney Rooney addressed.

Council Member Gibson motioned approval; Council Member Jesse Purdon seconded; and the motion carried unanimously.

- G. Authorize staff to submit a letter to the Lee County Department of Human and Veteran Services identifying the proposed projects and budget for allocation of the City of Bonita Springs Community Development Block Grant (CDBG) funds for the FY2022-2023 Entitlement budget for public infrastructure within the defined eligible areas. (Green Sheet No. 22-08-126)

11. Mayor and Council Member Items: No items.

12. First Readings and Public Hearings:

- A. (First Reading) AN ORDINANCE OF THE CITY OF BONITA SPRINGS; AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS IMPERIAL CROSSING IN THE OLD 41 DOWNTOWN; AND PROVIDING FOR EFFECTIVE DATE. (Green Sheet No. 22-08-129)

City Attorney Rooney read the title block into the record.

Council Member Gibson motioned to move to second reading.

Council Member Chris Corrie addressed changes in standards issued by the Government Accounting Standards Board, which states that all leases are financing transactions, which means that there is a need to know the value of the subject property. He recommended that the City contact CBRE to get their advice on ground leases and that the City receive advice from financial advisors with respect to the discount rate to be used to determine the present value. He would also advise obtaining an appraisal to know what the value is that would have to be recovered and that we involve the City's auditing firm to make sure that the agreement meets the new accounting standards. He is not in favor of moving forward to second reading at this time. He feels Council needs to hold a workshop with the advisors to understand what the requirements of the lease agreement must be.

City Attorney Rooney clarified that Barron Collier has provided a preliminary term sheet, not a draft lease. The Finance Director is going to investigate the accounting mechanisms and consult with the auditors. Staff will also be talking with CBRE, and he would request direction on the appraisal, which could take additional time. He will be working on the legal elements, and the business terms are for the Council's determination with advice from consultants.

City Manager Hunter stated that staff is prepared to engage CBRE to provide an independent analysis of any business terms of the ground lease, and she also spoke with the Finance Director about consulting with the City's contracted auditors to ensure that the proper protocol is followed.

Council Member Purdon seconded the motion; and the motion passed 6-1 (Council Member Corrie opposed)

- B. (First Reading) AN ORDINANCE OF THE CITY OF BONITA SPRINGS; EXTENDING THE ELECTRIC UTILITY FRANCHISE FOR FLORIDA POWER AND LIGHT COMPANY; AND PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-08-119)

City Attorney Rooney read the title block of the Ordinance into the record.

Mayor Steinmeyer motioned to move to second reading; Council Member Quaremba seconded; and the motion carried unanimously.

- C. (First Reading) AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA RELATING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR INTENT; PROVIDING FOR LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. (Green Sheet No. 22-08-118)

City Attorney Rooney read the title block of the Ordinance into the record.

Council Member Quaremba motioned to move forward to second reading; Council Member Carr seconded; and the motion carried unanimously.

- D. Second Reading and Public Hearing of the following Ordinance: AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, APPROVING THE PETITION OF BONITA SPRINGS UTILITIES, INC., TO INCREASE ITS WATER AID-TO-NEW CONSTRUCTION FEES AND CERTAIN MISCELLANEOUS SERVICE CHARGES; AND PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-08-128)

City Attorney Rooney read the title block of the Ordinance into the record.

Council Member Gibson motioned adoption of the Ordinance; Council Member Carr seconded.

No public comments were made.

The motion carried unanimously. **ADOPTED ORDINANCE NO. 22-04**

- E. Second Reading and Public Hearing of the following Ordinance: AN ORDINANCE AMENDING THE BONITA SPRINGS CODE OF ORDINANCES CHAPTER 24 - FLOOD HAZARD REDUCTION – TO CLARIFY AND UPDATE DEFINITIONS AND REGULATIONS AS NECESSARY TO REMAIN IN THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE. (Green Sheet No. 22-08-115)

City Attorney Rooney read the title block of the Ordinance into the record.

Council Member Gibson motioned to adopt the Ordinance; Council Member Carr seconded.

PUBLIC COMMENTS:

Alex Grantt addressed a conversation he had with Derek Wiley, District Conservationist with the National Flood Insurance agency, in regards to the Bamboo site.

The motion carried unanimously. **ADOPTED ORDINANCE NO. 22-05**

- F. Second Reading and Public Hearing of the following Ordinance: AN ORDINANCE OF THE CITY OF BONITA SPRINGS; RELATING TO BUILDING AND CONSTRUCTION CODES; AMENDING CHAPTER 10 – BUILDING CODES AND STANDARDS – ADOPTING LOCAL TECHNICAL AMENDMENTS TO THE *FLORIDA BUILDING CODE*; ADDING DEFINITIONS FOR DETERMINING REPETITIVE LOSS, COASTAL A ZONES; SUBSTANTIAL DAMAGE AND SUBSTANTIAL IMPROVEMENT; PROVIDING FOR CONFLICT OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE. (Green Sheet No. 22-08-116)

City Attorney Rooney read the title block of the Ordinance into the record.

Council Member Gibson motioned to adopt the Ordinance; Council Member Quaremba seconded.

PUBLIC COMMENTS:

Alex Grantt commented that the pest control industry is gravely concerned about the effects of climate change.

The motion carried unanimously. **ADOPTED ORDINANCE NO. 22-06**

13. City Attorney’s Items:

14. City Manager’s Items:

- A. Update regarding master plan for the Banyan Tree parcel in Downtown Bonita. (Green Sheet No. 22-08-124)

Galina Tachieva, with DPZ, next provided a presentation on potential development for the Banyan Tree site.

City Manager Hunter advised that the City has funds in a CIP to initiate planning activities once the Council considers the various options presented by DPZ and provides direction at a future date.

- B. Approve a Resolution to adopt the 2022-2023 annual Stormwater Assessment Fee (Green Sheet No. 22-08-127)

Council Member Quaremba motioned to approve; Council Member Carr seconded; and the motion passed 4-2 (Council Member Purdon opposed). **ADOPTED RESOLUTION NO. 22-51**

C. Adopt a proposed millage rate for fiscal year 2022-2023 (Green Sheet No. 22-08-117)

Council Member Corrie motioned to approve; Council Member Carr seconded.

The motion passed 4-2 (Mayor Steinmeyer and Council Member Purdon opposed)

ADDITIONAL ITEM:

City Manager Hunter informed Council of notice received by Capitol Strategies who will no longer be providing lobbying services to the City as of August 31, 2022. City Council consensus to move forward with an RFP.

15. Mayor and Council Member Reports

Council Member Quaremba addressed the Zoning Ordinance that Council approved for the property adjacent to the I-75 interchange, which reminded her that there is a conceptual plan to do some type of branding at that intersection and that there is a possible need to secure property for branding, monuments, lighting, etc. City Manager Hunter clarified that Stantec is creating a master plan of placemaking and gateway features throughout the entire city. Council Member Quaremba also mentioned the need to discuss the Goodbread Grocery structure and the potential use of bonus density payments into an affordable housing trust fund.

Council Member Forbes concurred with comments by Council Member Quaremba and suggested that the City should maintain control of the development of affordable housing.

Council Member Carr asked about Habitat for Humanity projects in response to the affordable housing topic and suggested using the money to augment those efforts. She also addressed a presentation by FPL regarding solar shading.

16. Public Comment

Kyle Moran addressed downtown development and spoke in support of Barron Collier's proposal.

Noelle Cancel spoke in support of the Wonder Gardens restaurant.

Fred Eck spoke about the potential to utilize the Wonder Gardens restaurant as a location for his new restaurant.

Carla Sage commented on the need of more public outreach regarding the Wonder Gardens restaurant. She also addressed the banyan tree, hurricane evacuation, and downtown redevelopment.

Elnita Hitchcock spoke in support of preserving the history of downtown.

Council Member Forbes and Purdon briefly addressed the Wonder Gardens and comments made.

17. Adjournment

There being no further items to discuss, the meeting adjourned at 8:10 p.m.

Respectfully submitted,

Debra Filipek, City Clerk

APPROVED:
CITY COUNCIL

Date: _____

AUTHENTICATED:

Mayor Rick Steinmeyer

REQUESTED MOTION: Discussion regarding the Lee County Metropolitan Planning Organization's Rail Trail Feasibility Study.

REQUESTOR: Council Member Amy Quaremba, District 1

AGENDA: Council Member Items

STRATEGIC PRIORITY: N/A

BACKGROUND:

At the last Council Meeting, I advised the Council that I would like to discuss the Lee County MPO's Rail Trail Feasibility Study, for which the City is a partner. The attached information includes maps of the three trail alternatives, as well as the opportunities and challenges of each one. The Lee County MPO is requesting public input and ranking of the three alternatives in order of importance by the end of October.

If Council agrees, I suggest that a link should be provided on our City's website, as well as send out an email blast to our community, with information regarding the MPO's Rail Trail Feasibility Study.

Additionally, staff has reached out to the Lee County MPO to provide a presentation of this study to City Council at our October 6, 2022 council meeting.

STAFF RECOMMENDATION: Council's pleasure.

ATTACHMENTS:

1. Rail Trail Feasibility Study May 2022 Newsletter
2. Rail Trail Feasibility Study June 2, 2022 Public Workshop Presentation
3. Public comment card

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

Rail Trail Feasibility Study



**Join the Lee County MPO for a Public Meeting
on Thursday, June 2 beginning at 6 p.m.**

The Lee County Metropolitan Planning Organization (MPO) and their partners are seeking public input on a Rail-Trail Feasibility Study that is underway. The public is invited to provide input on three alternatives for a north/south public multi-use trail through south Lee County and into north Collier County. The trail alternatives are being studied as part of the regional efforts to plan and develop the Gulf Coast Trail from Pinellas County down to Collier County. The study team will use public input to help select a Preferred Alternative(s) to advance to the next project phase.

ABOUT THIS FEASIBILITY STUDY

In March 2021, the Lee County MPO in partnership with the City of Bonita Springs and the Village of Estero, commissioned a consultant team to begin the Study to analyze the long-term feasibility of a public multi-use trail within the Seminole Gulf Railway (SGLR) corridor south of Alico Road or alternatively in the adjacent surrounding areas. The Study is funded by a grant from the Florida Department of Transportation's (FDOT) Sun Trail Program with local matches from the City of Bonita Springs and the Village of Estero.

The study area boundaries include Bonita Beach Road (south), Alico Road (north), US 41 (west) and I-75 (east). The proposed trail will pass through south Lee County into north Collier County through the City of Bonita Springs and the Village of Estero. Concept alternatives will identify right-of-way (ROW) impacts, security measures, maintenance procedures, and environmental impacts. The preliminary analysis evaluated trail connectivity, project readiness, service, and the user experience. The study also collected data on ROW, planning-level costs, rail-trail crossings, and existing utilities. The three alternatives include a rail-to-trail alignment, a rail-with-trail alignment, and a trail alignment adjacent to existing roadways.

HISTORY OF THIS STUDY

The Rail-Trail Feasibility Study is the culmination of nearly a decade of planning efforts and public discussions to select a public transportation option for the SGLR corridor. In 2013, the Lee County MPO assessed the long-term feasibility of adding public transportation options within the existing SGLR corridor across all of Lee County. The study examined several alternatives that could co-exist with freight rail including light rail, commuter rail, bus rapid transit and a multi-use Trail.

SCHEDULE AND NEXT STEPS

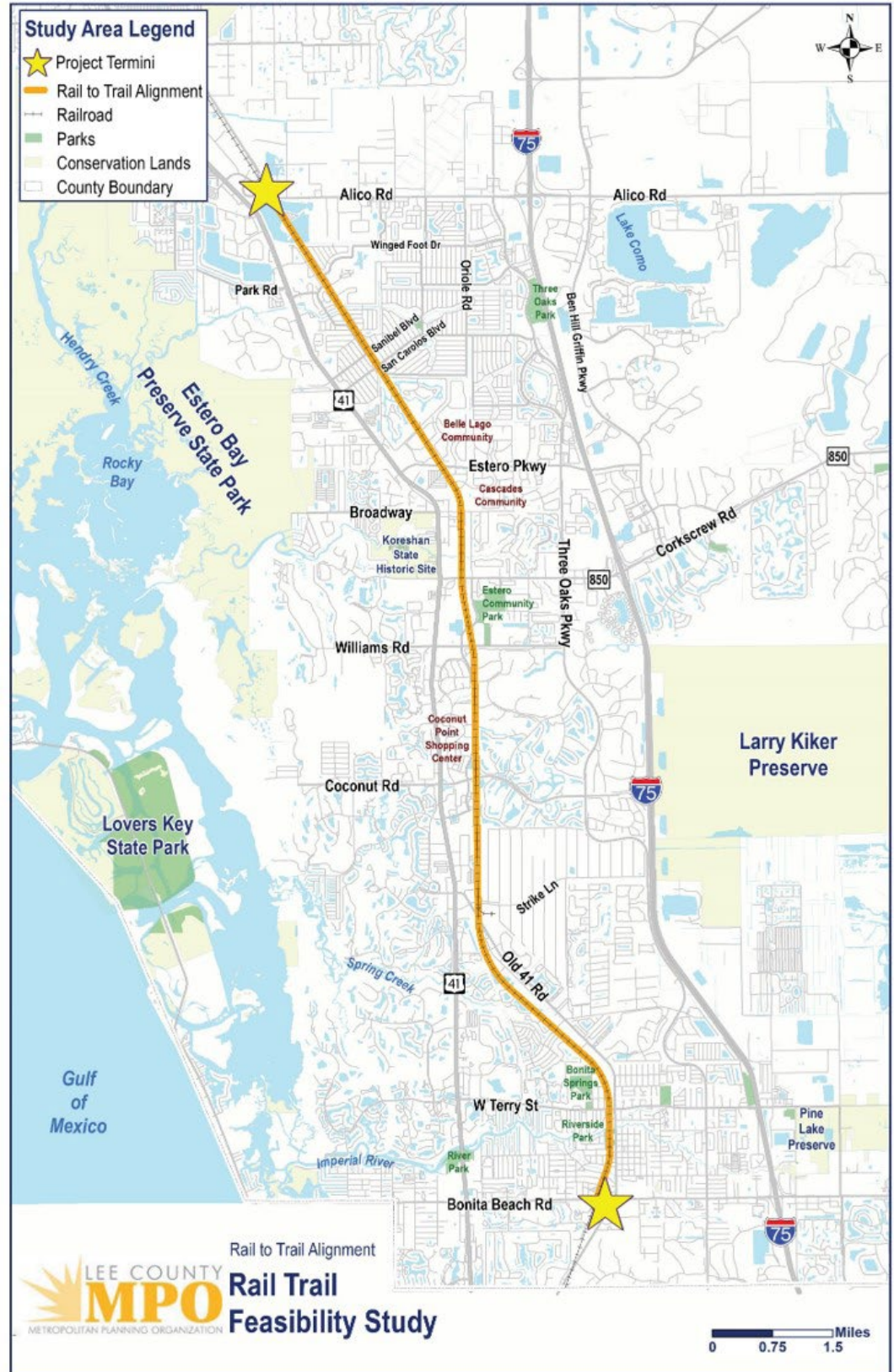
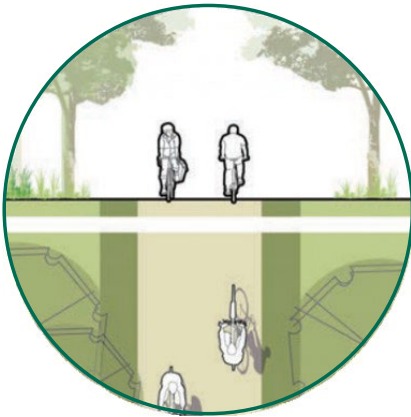
The estimated completion date for the Rail-Trail Feasibility Study is November 2022. The Lee County MPO will be accepting public comment until end of October 2022.

18 – Month Schedule	2021										2022							
 = Concept Workshop  = Report Docs  = Milestone Event  = Progress Item	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Notice to Proceed (March 19, 2021)																		
Task Management (Monthly Progress Meeting with PM; Kickoff Meeting and Management Plan)																		
Task 1 (Kickoff Meeting)		 																
Task 2, 5, 6, 9 (Data Collection)																		
Task 3 (Title Search)																		
Task 4 (Survey)																		
Task 5 (Trail Corridor Review and Mapping)																		
Task 6 (Environmental Assessment)																		
Task 7 (Geotechnical)																		
Task 8 (Stormwater Analysis)																		
Task 9 (Data Collection, Utility Impacts)																		
Task 10, 11 (Roadway Crossings/Bridges existing)																		
Task 12, 13, 14 (Trail Concept Planning and Analysis)																		
Task 15 (Public Involvement; Steering Committee and Public Workshop)																		

THE THREE ALTERNATIVES DEVELOPED FROM THIS STUDY INCLUDE THE FOLLOWING:

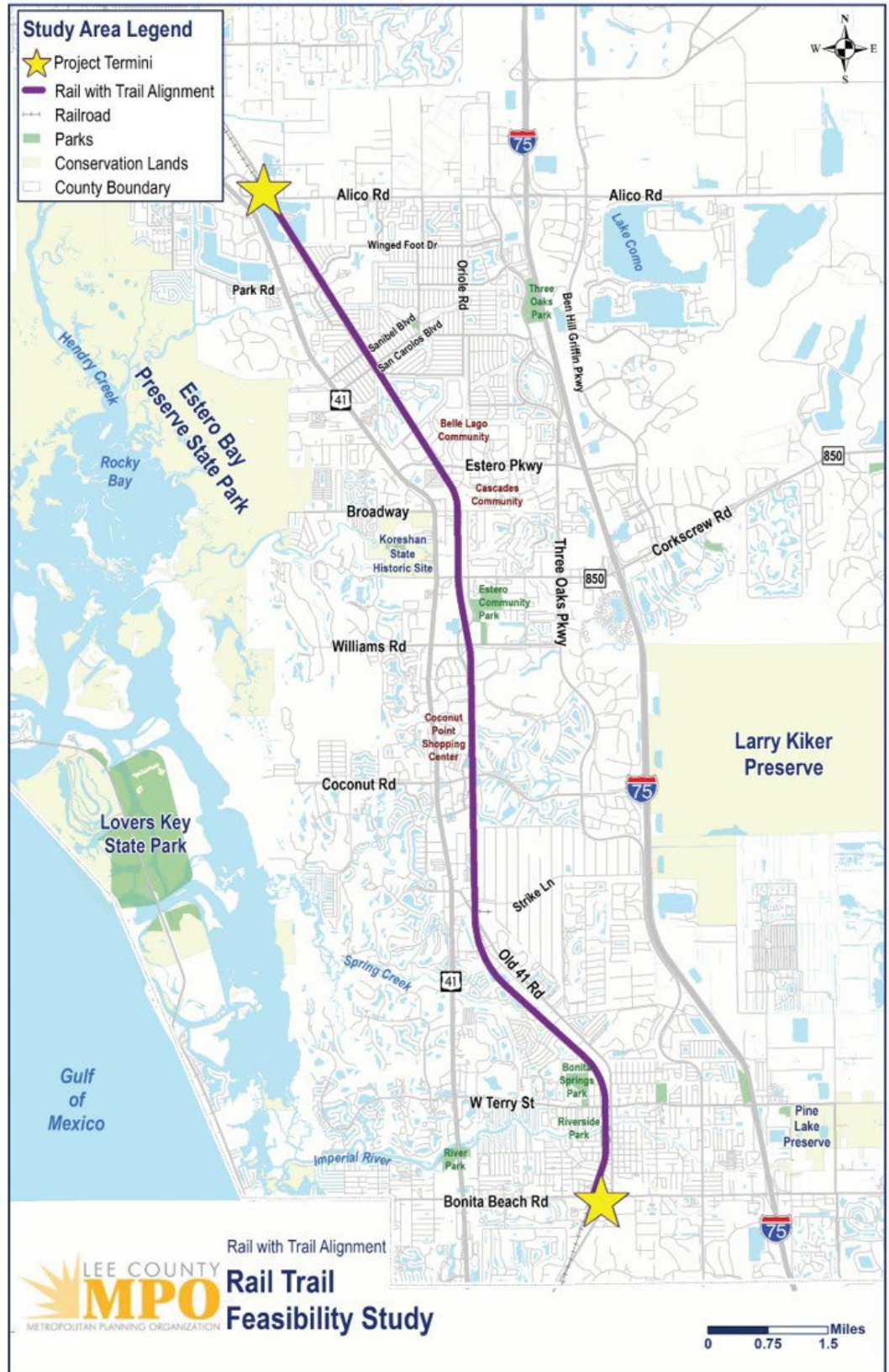
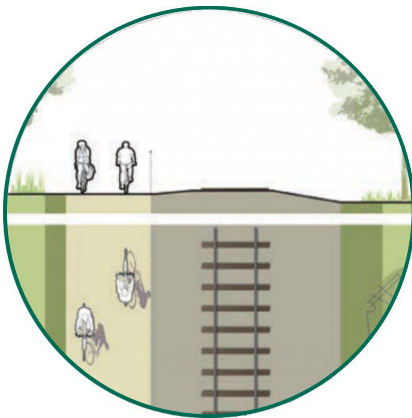
Alternative 1 – Rail-to-trail

A rail-to-trail alignment is within the SGLR corridor. This alternative is a multiuse path that is converted to a trail from an inactive rail line.



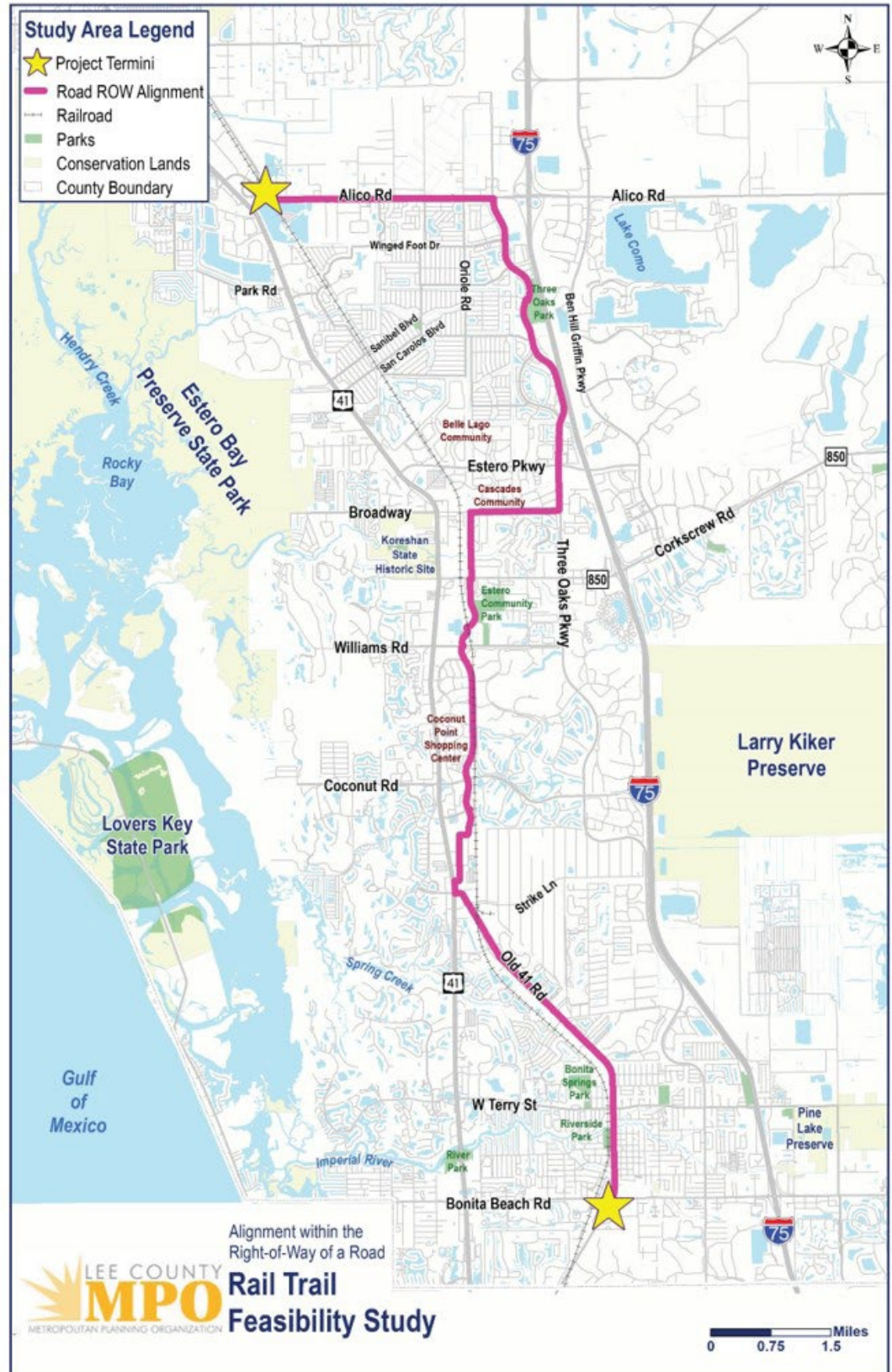
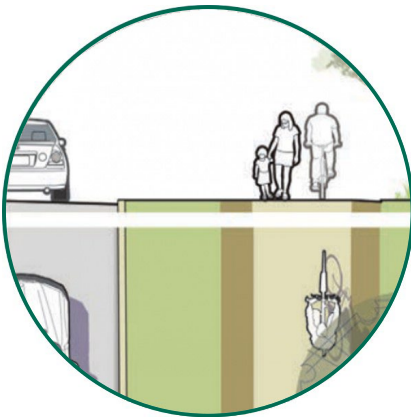
Alternative 2 – Rail-with-trail

A rail-with-trail alignment is parallel to the Seminole Gulf Railway (SGLR) corridor rail line. The path would be built within the railroad right-of-way on one side of the rail line. This allows the rail to continue to be operational.



Alternative 3 - Trail Alignment Adjacent to Road

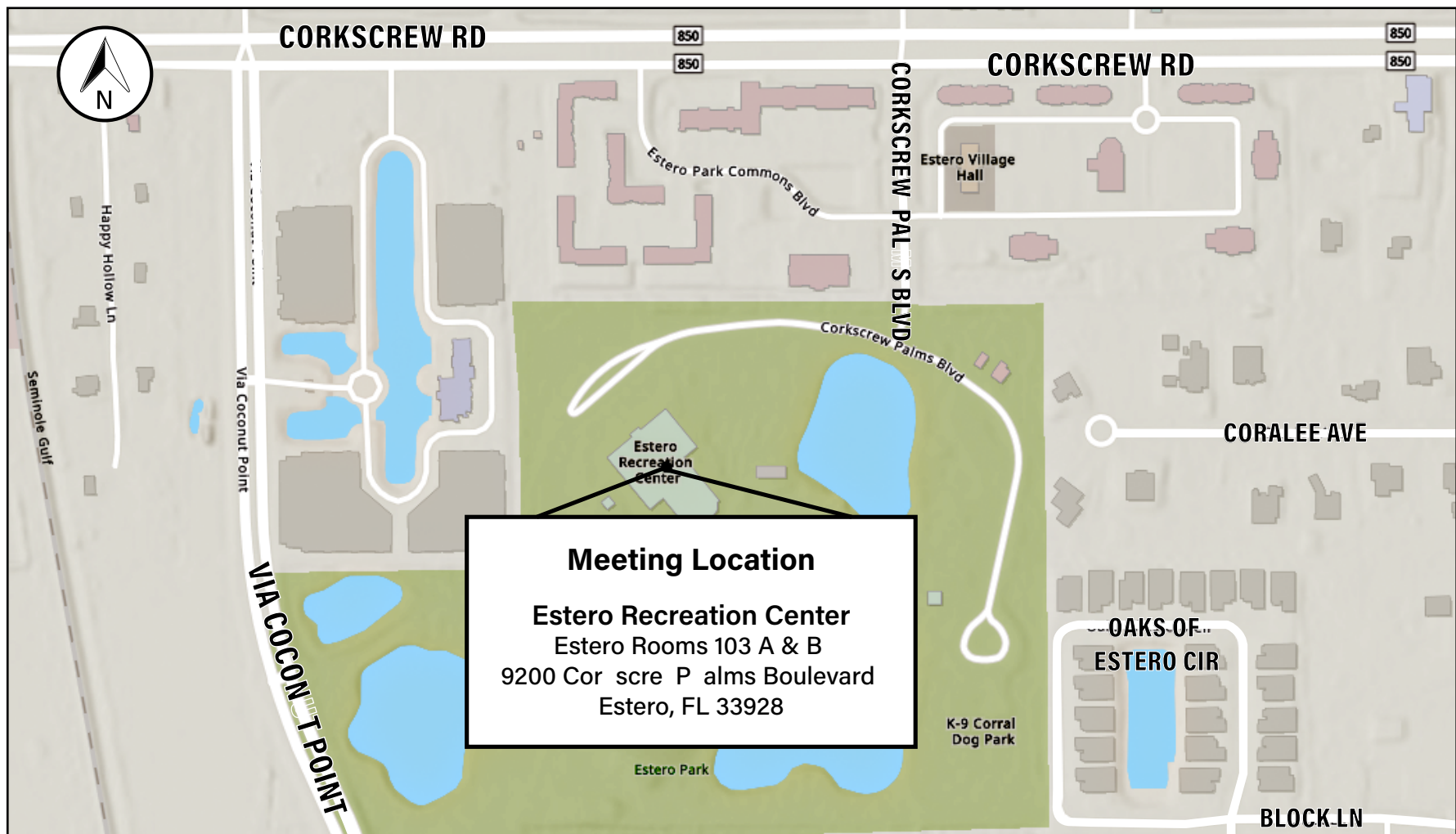
A trail alignment that runs parallel to the road within the existing ROW. This alignment, sometimes called a side-path, requires ample space between the road and the path for people to comfortably and safely use it.



Public Meeting on Thursday, June 2

Open House beginning at 6 p.m. / Formal Presentation at 6:30 p.m.

*Estero Recreation Center – Estero Rooms 103 A & B
9200 Corkscrew Palms Boulevard, Estero, FL 33928*



Lee MPO Rail-Trail Feasibility Study

Public Workshop | June 2, 2022



STUDY PURPOSE

Purpose

- To study the feasibility of a rail-trail within or near the Seminole Gulf Railway (SGL) corridor
- To meet the requirements of the Florida Shared-Use Nonmotorized (SUN) Trail Network Program
- To maintain eligibility for SUN Trail funding
- Recommend a Preferred Alternative(s) using:
 - Technical analysis
 - Public and stakeholder input

Key Study Terms

- Rail-to-Trail: Rail corridor converted to a multi-use trail
- Alignment: The location and type of project within a corridor
- Alternative: The corridor and alignment under study

STUDY TEAM

Consultant Team



Government Partners



ABOUT RAIL-TO-TRAILS

U.S.



1965

Elroy-Sparta State Trail opened,
the first in the U.S.

2,270

Number of completed
rail-to-trail projects in the U.S.

FLORIDA



1988

Tallahassee-St. Marks Historic Railroad
State Trail opened, the first in Florida

65

Number of completed
rail-to-trail projects in Florida

Source: Rails to Trails Conservancy as of 2021



LEGACY TRAIL, FLORIDA

Trail Timeline:

- 1971: Passenger rail service ends
- 1992: Freight rail service ends
- 2004: Sarasota County purchases corridor
- 2008: Trail opens
- 2017: Voters approve funding for extension

Trail Length:

- ~18.5 miles
 - Fruitville Road (north)
 - Venice Train Depot (south)
- Connects to a wider trail network

Trail Demand:

- ~479K people used the trail in 2021
- ~305K as of April 2022



Legacy Trail, Florida

STUDY AREA

Boundaries:

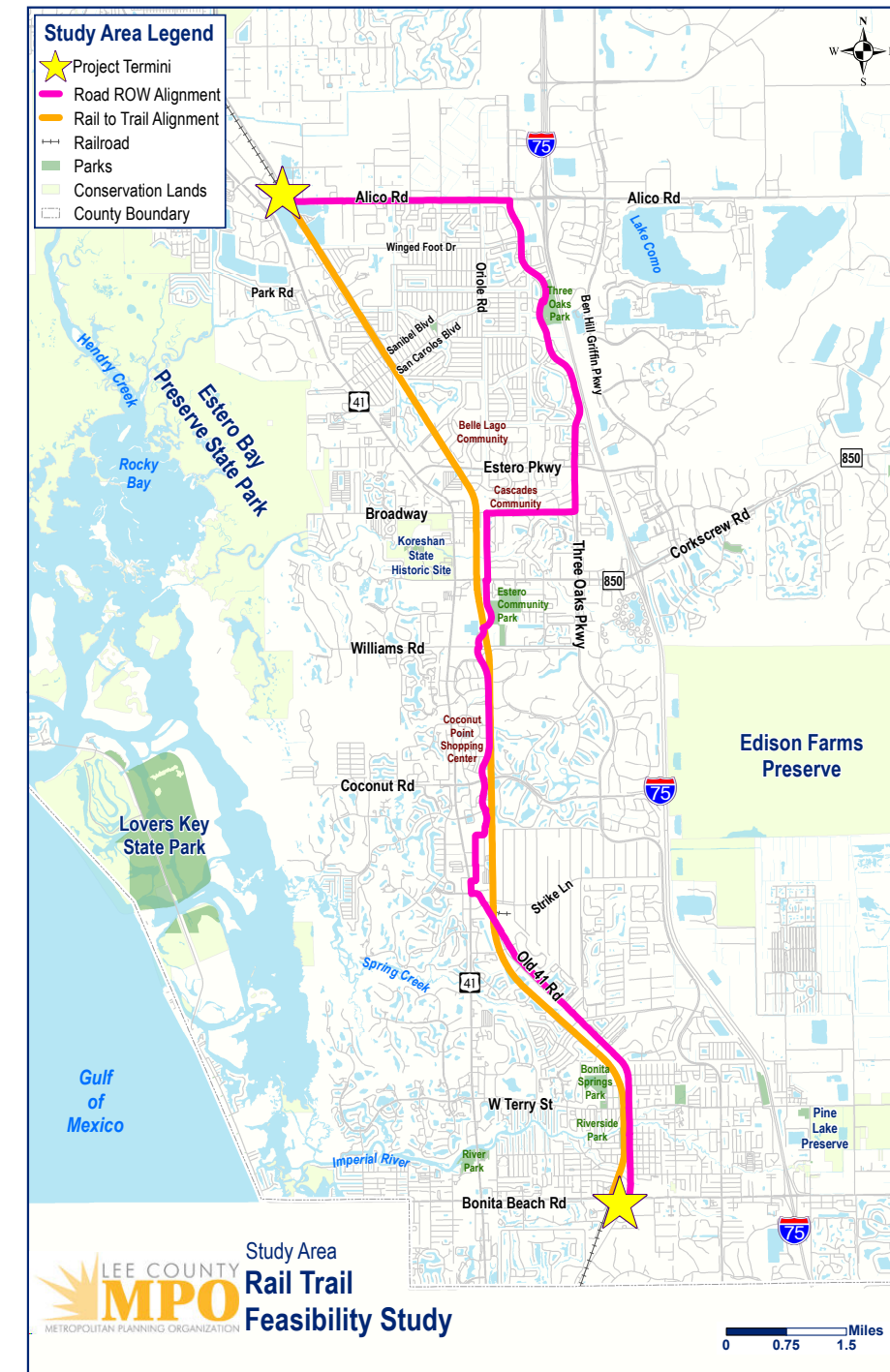
- Alico Road (north) and Bonita Beach Road (south)
- I-75 (east) and US 41 (west)

Collier County Segment:

- Extends 1.5-miles into Collier County
- Not evaluated for this study

Future Study:

- Explore connection to:
 - Paradise Coast Trail
 - ✓ Via Old US 41: Widening includes shared-use path on west side of the road and bike lanes
 - SUN Trail Network
 - ✓ Via Rail Corridor and Veterans Memorial Boulevard Extension
 - ✓ Via Imperial Boulevard/Livingston
 - ✓ Via Old 41 as part of 4-lane widening



STUDY METHODOLOGY

SCREEN 1 ANALYSIS

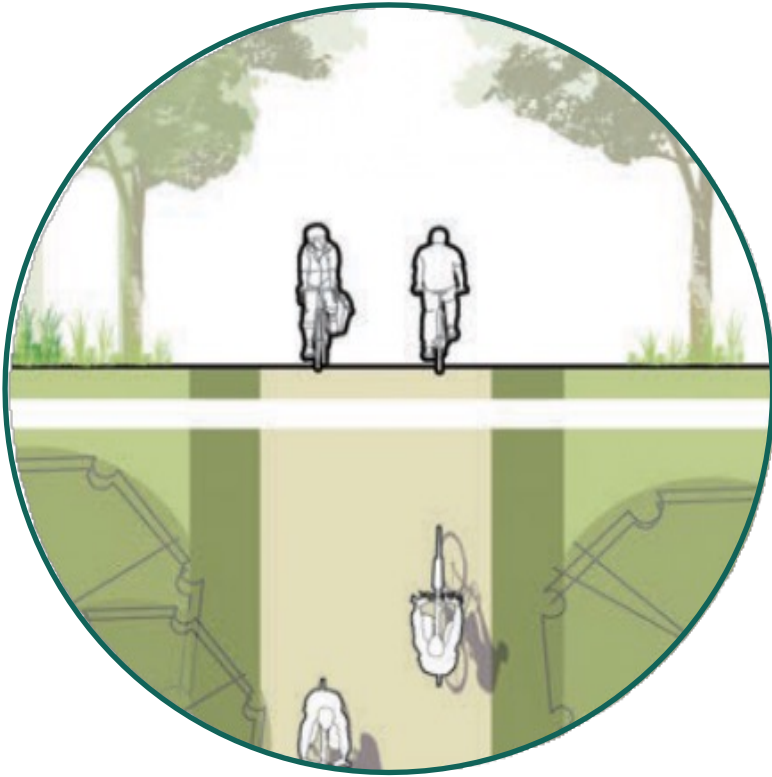
- Evaluated 7 alternatives
- Used the following evaluation criteria:
 1. SUN Trail Funding Eligibility
 2. Available ROW
 3. User Experience
 4. Development Challenges



SCREEN 2 ANALYSIS

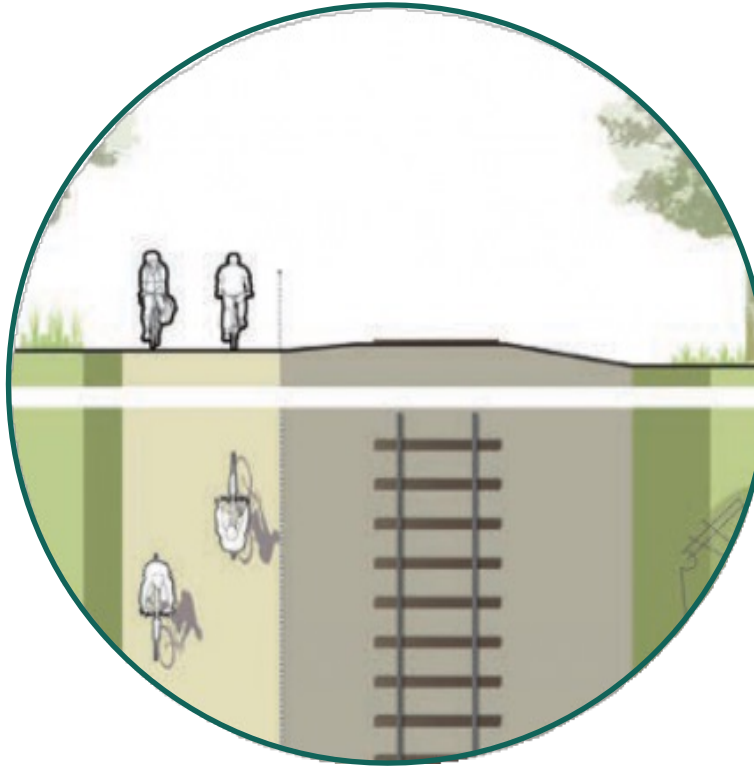
- Evaluated 3 alternatives
- Used the following evaluation criteria:
 1. Connectivity
 2. Project Readiness
 3. Service
 4. User Experience

ALTERNATIVES



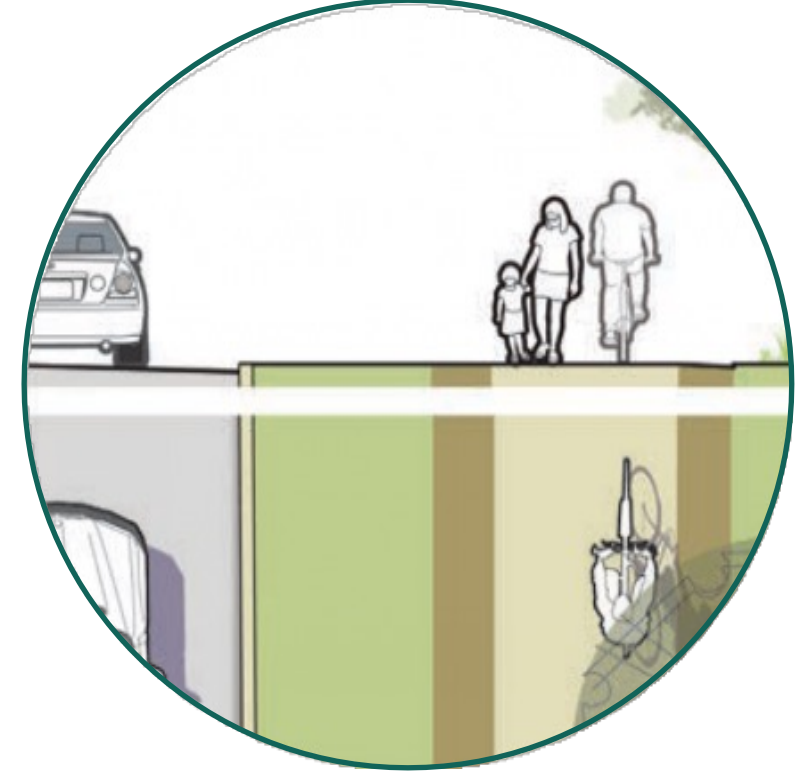
Alternative 1

Rail-to-trail alignment
within the SGL corridor



Alternative 2

A rail-with-trail alignment
within the SGL corridor



Alternative 3

A trail alignment within the
road right-of-way (ROW)

FEASIBILITY STUDY PROGRESS



The Delaware and Lehigh National Heritage Trail in Lehighton, Pennsylvania

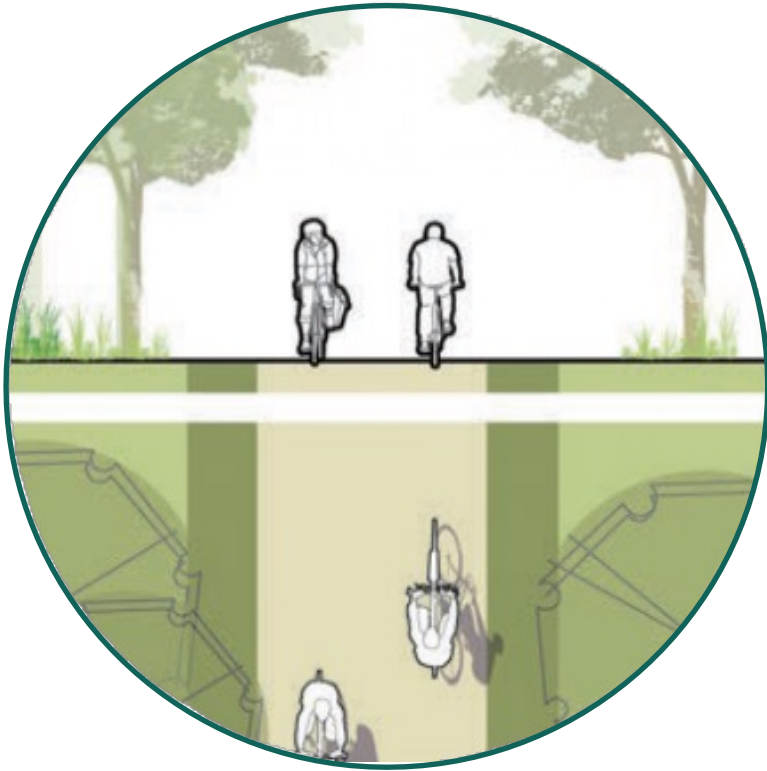
Tasks that are In Progress:

- Documentation/Tech Memos
- Public Presentations
- Monthly Progress Meetings
 - MPO and Municipal Staff

Completed Tasks:

- Bridge Inventory Analysis
- Environmental Assessment
- Kickoff meeting (April 6)
- Data collection and Mapping
- Utilities Inventory
- Roadway Crossing Inventory
- Alternatives Evaluated
- Briefing Report

ALTERNATIVE #1: RAIL-TO-TRAIL



A Rail-to-Trail is a multiuse path that is converted to a trail from an inactive rail line.



The Michigan Airline Trail in Wixom, Michigan

ALTERNATIVE #1: RAIL-TO-TRAIL

Planning Level Construction Costs:

- \$4-6 Million per mile

Right-of-way:

- Requires agreement with railroad for fee simple purchase

Road-Trail Crossings:

- 20

Utility Providers:

- Florida Power & Light, TECO Gas, Lee County Utility, Bonita Springs Utility (predominantly at road crossings)



ALTERNATIVE #1: RAIL-TO-TRAIL



Connectivity

OPPORTUNITIES

- Creates connections to local businesses, parks, schools, and other civic spaces
- Could use existing bridges
- Provides equal access opportunities to residents from both the east and west side of the corridor
- Creates more of a linear park opportunity and is a low-stress facility completely separate from the roadway

CHALLENGES



Project Readiness

- May require relocation of utilities and retrofit of existing bridges.
- Will require agreement with railroad for fee simple purchase of right-of-way



Service

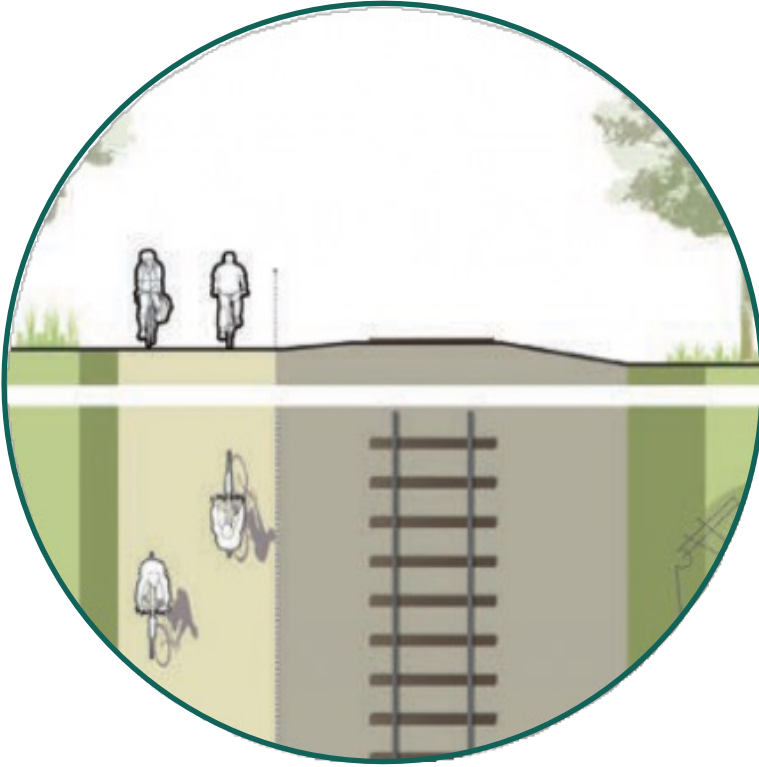


User Experience

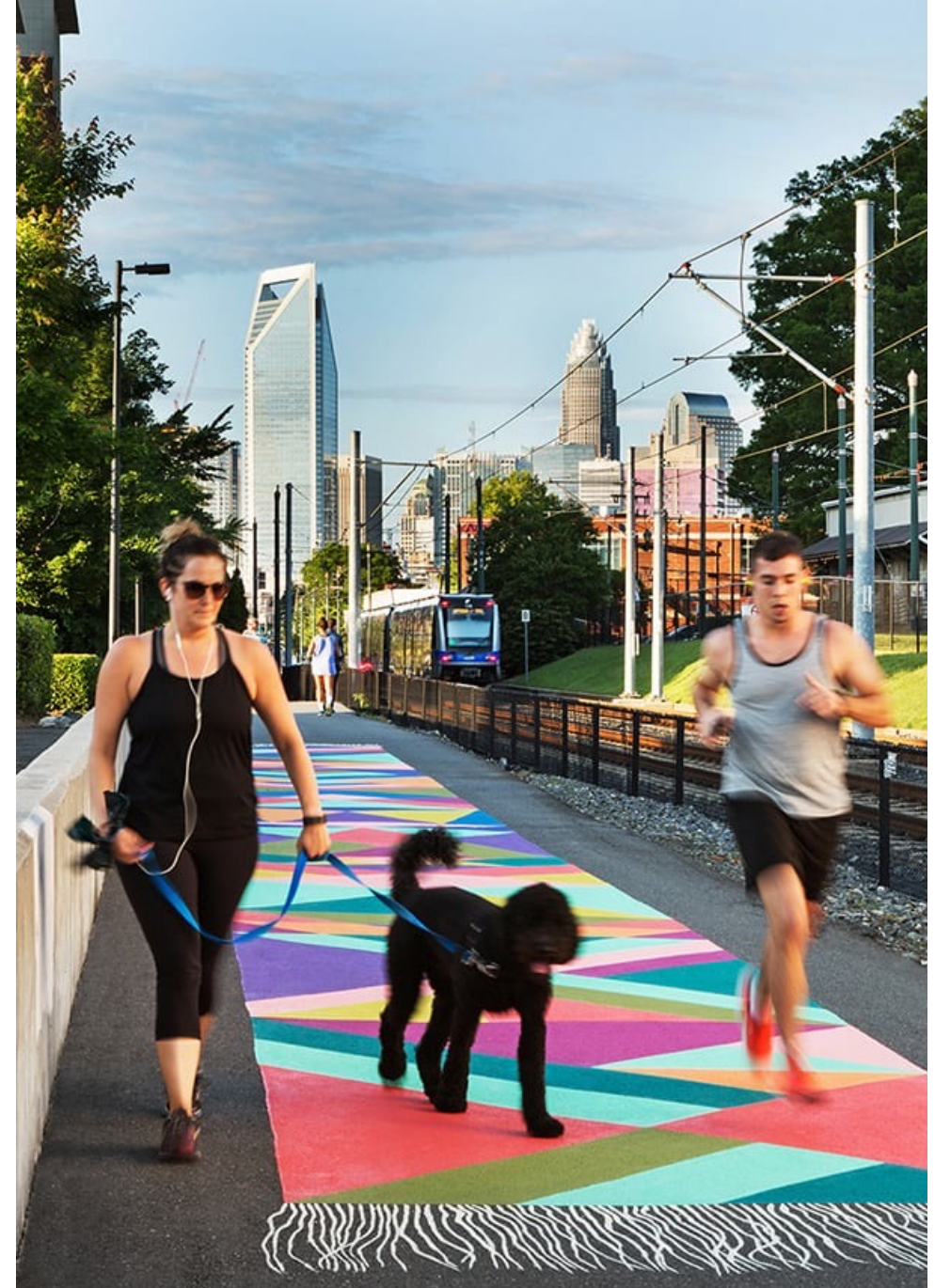
- Estero Parkway, Corkscrew Road, and Coconut Road are potential locations for overpass crossings



ALTERNATIVE #2: RAIL-WITH-TRAIL



A Rail-with-Trail alignment is parallel to the rail line. The path would be built within the railroad right-of-way on one side of the rail line. This allows the rail to continue to be operational.



A Rail-with-Trail in Charlotte, NC

ALTERNATIVE #2: RAIL-WITH-TRAIL

Planning Level Construction Costs:

- \$7-10 Million per mile

Right-of-way:

- Requires agreement with railroad for fee simple purchase or lease* with SGLR for partial corridor

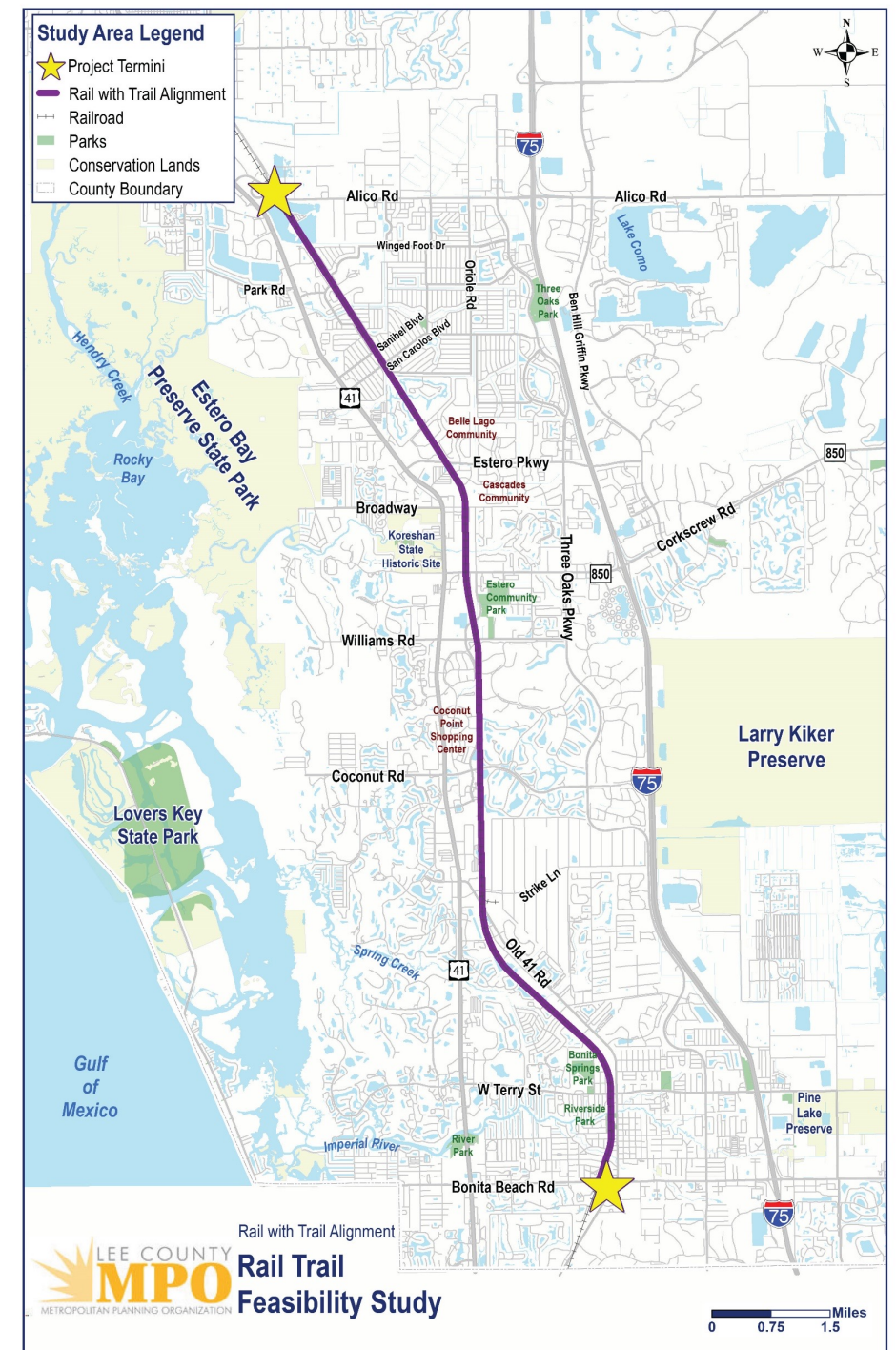
Road-Trail Crossings:

- 20

Utility Providers:

- Florida Power & Light, TECO Gas, Lee County Utility, Bonita Springs Utility (predominantly at road crossings)

*With lease option, Alternative #2 capital improvements will not be eligible for SUN Trail funding



ALTERNATIVE #2: RAIL-WITH-TRAIL



Connectivity



Project Readiness



Service



User Experience

OPPORTUNITIES

- Is a low-stress facility because it would be separate from the road

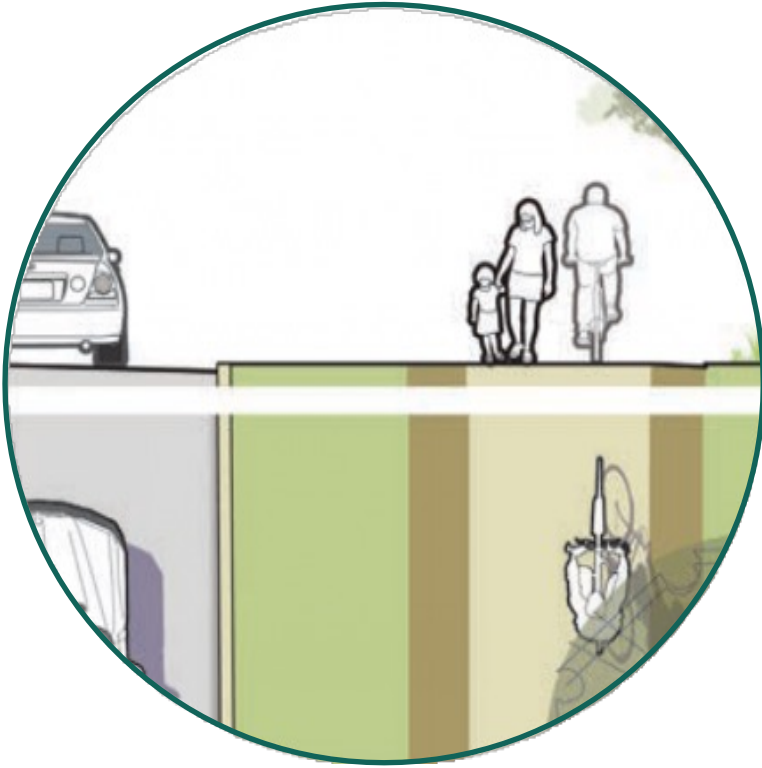
CHALLENGES

- Requires selection of east or west side of the rail, which will limit connectivity to secondary access points
- May require utility relocation, new bridges, and modification to stormwater features.
- May require pedestrian overpasses at Estero Parkway, Corkscrew Road, and Coconut Road.
- May require purchase of partial rail corridor or a lease with Seminole Gulf Rair
- Because of the rail line, it will not be accessible from all directions



A rail-with-trail in Cambridge, MA

ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD



A trail alignment that runs parallel to the road within the road's ROW. Also named sidepath, they require ample space between the road and path for people to comfortably and safely use it.



A trail adjacent to the roadway in Fort Myers Beach, FL

ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD

Planning Level Construction Costs:

- \$13-18 Million per mile

Right-of-way:

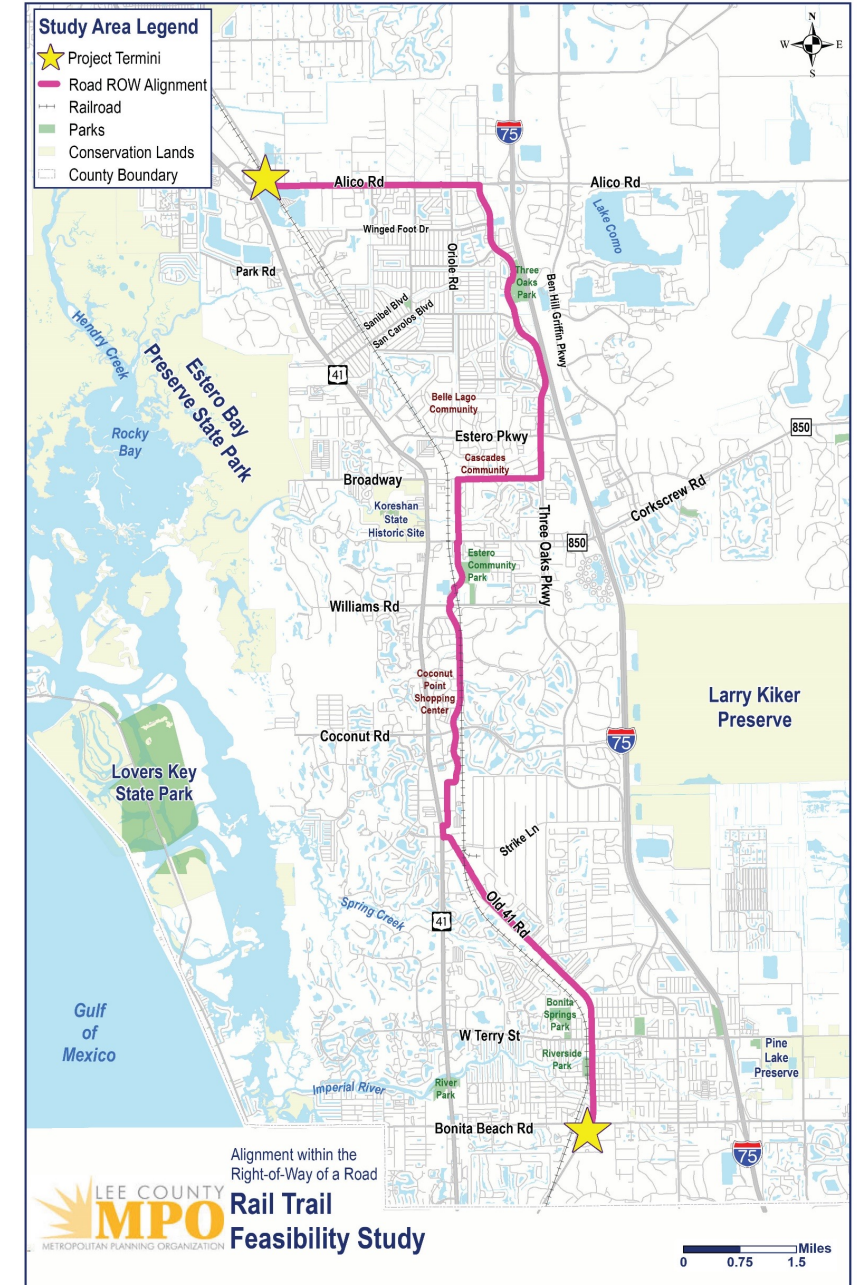
- Cannot be built entirely within existing roadway ROW
- Will require acquisition of property

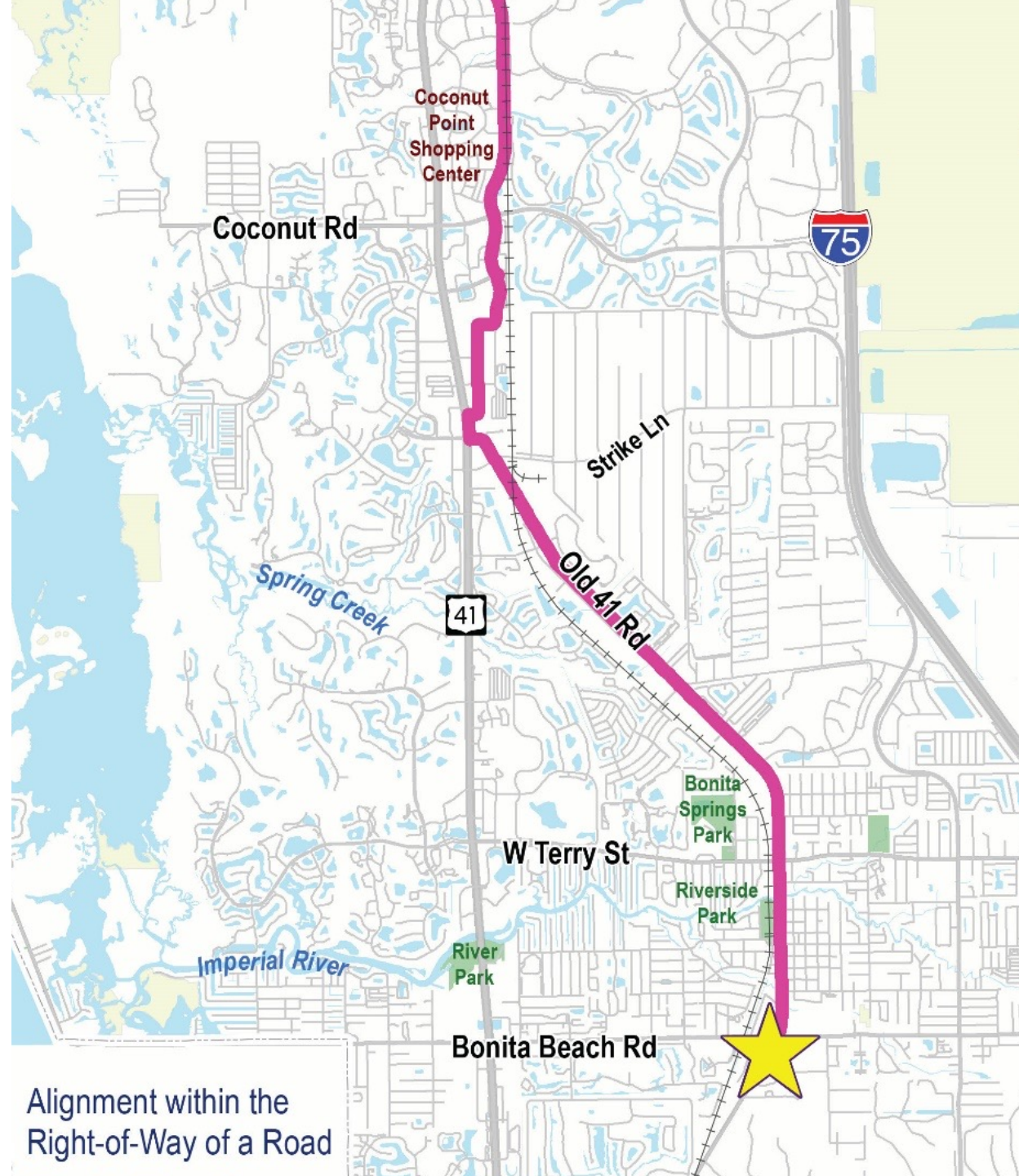
Road-Trail Crossings:

- 96 (includes roadway/ driveway crossings)

Utility Providers:

- Florida Power & Light, TECO Gas, Lee County Utility, Bonita Springs Utility throughout the corridor





ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD



Connectivity



Project Readiness



Service



User Experience

OPPORTUNITIES

- Portions ready for construction (e.g., Sandy Lane shared-use path; Broadway East to Three Oaks and/or Broadway North to Estero Parkway)

CHALLENGES

- Does not directly connect to the existing SUN Trail Network because it is farther from US 41 and closer to I-75
- Requires purchase of ROW
- Requires new bicycle and pedestrian bridges, and upgrades to 96 crossings.
- Does not provide as much accessibility
- Is a high stress facility next to high-volume multi-lane road, with many driveway and roadway crossings



A trail adjacent to the road in Austin, TX



Alico Road

Next Steps and Questions



Rail Trail Feasibility Study

Comment Form

Please use this feedback form to express your opinions about this project. Email your comments to the Public Information Consultant at: info@LeeCollierRailTrail.com.

Please keep in mind that this is a public record.

Full Name *

First Name

Last Name

Address *

Street Address

Street Address Line 2

City

State / Province

Postal / Zip Code

E-mail

example@example.com

Please rank the Alternatives in order of importance with 1 being the most important.

	1 - most important	2 - important	3 - least important
Alternative 1	☐	☐	☐
Alternative 2	☐	☐	☐
Alternative 3	☐	☐	☐

Comments:

Thank you for your interest in this project. Public participation is solicited without regard to race, color national origin, age, sex religion, disability, or family status. The information you provide on this comment form becomes part of the project files. This information may be provided to other individuals who may make a public records request.

REQUESTED MOTION: First reading of the following Ordinance: AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING THE BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 3 - DEVELOPMENT STANDARDS, SECTION 3-263 - BIKEWAYS FACILITIES AND PEDESTRIAN FACILITIES, DIVISION 6 - OPEN SPACE, BUFFERING, AND LANDSCAPING, AND SEC. 3-535 - PIPING MATERIALS FOR USE IN RIGHT-OF-WAY; AND CHAPTER 4 - ZONING, DIVISION 18 - HOME OCCUPATIONS AND DIVISION 37 – SUBORDINATE AND TEMPORARY USES, SUBDIVISION III. - MOBILE FOOD VENDORS, PROVIDING CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING, AND AN EFFECTIVE DATE.

REQUESTOR: John Dulmer, AICP and Jacqueline Genson, AICP

AGENDA: First Reading

STRATEGIC PRIORITY: #5 Community Aesthetics and #8 Economic Development

BACKGROUND:

On August 17, 2022, City Council authorized staff to prepare these LDC amendments. The LPA reviewed the LDC amendments at their August 18, 2022, meeting and provided minor grammatical edits, which are reflected in this current draft. The LPA found the LDC amendments consistent with the comprehensive plan. The LDC amendments are tentatively scheduled for second reading and public hearing on September 21, 2022.

Chapter 3-Development Standards

1. Sec. 3-263. - Bikeways facilities and pedestrian facilities.

These changes are a result of an appeal heard by the City Council. These changes correct a codification error reference for complete streets, clarify concise requirements for site-related and off-site improvements, and clarify the applicability for payment in lieu options.

2. Division 6-Open Space, Buffering, and Landscaping.

The Tree Advisory Board was created by Ordinance 06-10, which enumerates the duties of the board. One of the duties assigned is to “review and recommend revisions to tree ordinances for consideration by the City Council with the assistance of the City Manager and staff.” With the assistance of staff, the Tree Advisory Board compiled a list of recommendations for code changes/updates and additions to the existing code. The City Council directed Community Development staff to review those recommendations and prepare an ordinance for their incorporation into the Land Development Code.

3. Sec. 3-535. - Piping materials for use in right-of-way.

Current code does not allow for the use of plastic pipe for stormwater drain lines under travel ways. Due to demand and supply chain challenges, applicants are requesting staff to consider the use of plastic pipe, which Lee County and FDOT do allow for in the Lee County LDC Sec. 10-716 and the FDOT Standards for Road and Bridge Construction and related indexes, respectively. Other changes include updates to materials based on engineering best management practices and are generally consistent with other local jurisdictions and the FDOT.

Chapter 4-Zoning

1. Division 18- Home Occupations

This amendment includes changes to the LDC for home-based businesses as required for consistency with Florida Statutes 559.955.

2. Division 37 – Subordinate and Temporary Uses, Subdivision III. - Mobile Food Vendors

Changes include the removal of the language for mobile food vendor location permit approvals to be listed on the advertised city council agenda per City Council's direction. Other changes include clarifying language to existing standards discussed at the August 3, 2022 City Council meeting

STAFF RECOMMENDATION: Move to second reading and public hearing.

ATTACHMENTS: Draft regulations.

REVIEWERS:

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

Council Action: Approved __ Denied __ Deferred __ Other _____

Sec. 3-263. - Bikeways facilities and pedestrian facilities.

- (a) ~~*Bicycle and Pedestrian Master Plan.*~~ The Bicycle and Pedestrian Master Plan adopted on February 15, 2017 and as amended (hereinafter "the plan") shows locations of existing and proposed bike facilities and pedestrian facilities in the incorporated areas of the city. All development proposed along the roadways depicted on the plan must provide for bike facilities and pedestrian facilities in accordance with this section. Construction of bicycle and pedestrian facilities shown on the plan along the frontage of subject property are deemed to be site-related improvements. Any constructed bicycle and pedestrian facilities, such as sidewalks and bike lanes, must connect to existing facilities as well as to the internal development footprint in order to provide a safe network for all users, as required herein. All bike facilities and pedestrian facilities must comply with the complete streets policy.

Provision of bikeways facilities and pedestrian facilities. All development within the city must provide for bike facilities and pedestrian facilities in accordance with this section. The construction of bicycle and pedestrian facilities within properties, adjacent to the frontage of, and extending from properties are deemed to be site-related improvements. Any constructed bicycle and pedestrian facilities, such as sidewalks, bike lanes, multiuse trails, and pathways must connect to existing facilities as well as to the internal development footprint to provide a safe network for all users at all phases of development. All bike facilities and pedestrian facilities must comply with complete streets policies; and the standards provided herein.

- (b) *Provision of off-site bike facilities and pedestrian facilities.*

- (1) *General.* Off-site bike facilities and pedestrian facilities are required for all new developments, redevelopment projects, and for expansion of any existing development,

- (2) *Off-site facilities.*

- a. ~~Off-site facilities shown on the Bicycle and Pedestrian Master Plan.~~ The developer must construct a bike facility, or pedestrian facility, or multiuse facility in the public road right-of-way abutting proposed development if the subject property abuts a street shown on the plan in accordance with the roadways cross sections set forth in LDC Section 3-302. the complete streets design requirements set forth in LDC Section 3-303.

Note: The developer may choose to construct the facility outside of the public road right-of-way on their own property. If the developer opts to construct the facility across the property in this manner, an easement must be provided the easement ~~must be~~ at least two feet wider in width than the bike facility, or pedestrian facility, or multiuse facility and be perpetually open to the public.

- b. Off-site facilities; other.

1. ~~When any portion of the property to be developed is located within one-quarter mile (as measured along the principal perimeter street) of any other road shown on the plan as requiring either a bike facility or pedestrian facility, or within a one-quarter mile (as measured along the principal perimeter street) of an existing facility, the developer must construct a similar facility within the existing road right-of-way from the subject property to the existing or proposed~~

facility. This section will not require the purchase of right-of-way or easements where none exist. Where the facility cannot be constructed due to right-of-way constraints, a payment in lieu will be required in accordance AC 06-11-04, as it may be amended.

When any portion of a property to be developed is located within one-quarter mile (as measured along principal perimeter streets) of an existing facility, or is located within one-quarter mile (as measured along principal perimeter streets) of a proposed facility, the developer must provide for a bike facility, pedestrian facility, or multiuse facility consistent with the complete streets design requirements set forth in LDC Section 3-303 within the existing road rights-of-way from the subject property to the existing or proposed facility. This will not require the purchase of right-of-way where none exist. Where the facility cannot be constructed due to right-of-way constraints, a payment in lieu will be required in accordance with the fee-in-lieu contribution schedule in AC-06-11-04, as it may be amended.

2. When any portion of a proposed residential subdivision **development** is located within one-quarter mile (as measured along the principal perimeter street) of an existing or proposed pedestrian generator such as schools, parks, playgrounds, shopping centers or employment centers, or transit facilities, the developer must ~~construct a bike facilities and pedestrian facilities within the existing road right of way connecting the subdivision to the pedestrian generator in accordance with the roadway cross sections set forth in LDC Section 3-302. This section will not require the purchase of right-of-way or easements where none exist. Where the facility cannot be constructed due to right-of-way constraints, a payment in lieu will be required in accordance AC 06-11-04, as it may be amended.~~ **provide for a bike facility, pedestrian facility, or multiuse facility consistent with the complete streets design requirements set forth in LDC Section 3-303 within the existing road rights-of-way from the subject development to the pedestrian generator. This will not require the purchase of right-of-way where none exist. Where the facility cannot be constructed due to right-of-way constraints, a payment in lieu will be required in accordance with the fee-in-lieu contribution schedule in AC-06-11-04, as it may be amended.**
3. ~~In instances where a proposed development is within one-quarter mile of a road shown on the plan as requiring a bike facility or pedestrian facility and is also within one-quarter mile of an existing facility in the opposite direction on the same principal perimeter street, all connecting links will be required.~~
In instances where a proposed development is within one-quarter mile of an existing or proposed bike, pedestrian, or multiuse facility, and is also within one-quarter mile of another existing or proposed facility in the opposite direction on the same principal perimeter street, all connecting links will be required.
4. The developer must construct or bond the required bicycle, **and pedestrian, and multiuse** facilities along all street frontages, including non-buildable lots, common areas, stormwater ponds and other similar areas prior to issuance of a certificate of compliance for a project's infrastructure.

5. ~~All Development and redevelopment within the Bonita Beach Road Corridor Overlay may provide a payment in lieu in accordance with AC-06-11-04, as it may be amended, for the required facility upon approval by the city manager, or designee.~~

All development and redevelopment of properties abutting the bicycle, pedestrian, and multiuse facilities identified in Figure 5 (*Long Range Bicycle/Pedestrian Master Plan*) of the Comprehensive Plan Transportation Element, must provide for the required facilities identified on the plan, consistent with the complete streets design requirements set forth in LDC Section 3-303. This will not require the purchase of right-of-way where none exist. Where the facility cannot be constructed due to right-of-way constraints, a payment in lieu will be required in accordance with the fee-in-lieu contribution schedule in AC-06-11-04, as it may be amended.

6. All development and redevelopment within the Bonita Beach Road Corridor Overlay must provide for bike facilities, pedestrian facilities, and multiuse facilities consistent with the Bonita Beach Road corridor design standards set forth in LDC Sections 3-304 and 4-899. Upon approval by the city manager or designee, a payment in lieu of the required facilities can be provided by the developer in accordance with the fee-in-lieu contribution schedule in AC-06-11-04, as it may be amended.

e. ~~Impact fee credit. See section 2-202.~~

(3) *Location.*

- a. *County roads.* Off-site bike facilities or pedestrian facilities may be located within the county road right-of-way or within any easement if approved by the affected utility companies, the city manager or designee, and the county department of transportation.
- b. *State roads.* Off-site bike facilities or pedestrian facilities may be located within state road rights-of-way subject to approval and issuance of a general use permit by FDOT.
- c. *City roads.* Off-site bike facilities or pedestrian facilities may be located within the city road right-of-way or within any easement if approved by the affected utility companies and the city manager or designee.
- d. Maintenance of the constructed facility will be determined at the time of certification of compliance with the appropriate jurisdiction(s).

- (4) *Time of construction.* All off-site bike facilities and pedestrian facilities must be constructed prior to issuance of a certificate of compliance for the infrastructure of the development unless the developer posts a bond or other surety acceptable to the city as assurance of completion of the improvements. The city will not require construction of the bike facilities or pedestrian facilities where the right-of-way is scheduled for improvement within two years from the date of development order issuance, pursuant to the current city CIP and wherein the scheduled the right-of-way improvement would result in the destruction of the facility. In such circumstances, a payment in lieu of construction will be required in accordance with the fee-in-lieu contribution schedule in AC-06-11-04, as it may be amended.

(c) *Provision of on-site bike facilities and pedestrian facilities.*

(1) *General.*

- a. All developments. Interior bike facilities, and pedestrian facilities, and multimodal are required for both privately maintained and publicly maintained roadways, in accordance with the roadways cross sections set forth in LDC Section 3-302³.
- b. Alternate betterment plan. The city manager or designee may approve developments that provide an alternate betterment plan for an internal bike/facility/pedestrian/multiuse facility circulation system if the alternate system is functionally equivalent to the standards set forth herein, connects with existing facilities, and meets all off-site requirements. The alternate plan must be submitted simultaneously with the request for a development order for a subdivision plat. The master plan must be drawn to scale sufficient to indicate all lots and include the following:
 - (i) The location of all lots and the number and type of dwelling units on each lot.
 - (ii) The location, width, and type of each bike, facility and pedestrian, and multiuse facility including those to be connected to the bike facilities/pedestrian/multiuse facilities off-site.
 - (iii) Description of alternate design for the provision of bicycle/pedestrian/multiuse circulation within the development.
- (2) *Location.* The bike facilities or pedestrian (or any other bicycle and pedestrian-related facility, such as street furniture and street trees) facilities may be located within the road rights-of-way or within any easement(s) if approved by the affected utility companies and the city manager or designee, and where sited in accordance with the roadway cross sections in LDC Section 3-302. complete streets design requirements set forth in LDC Section 3-303.
- (3) *Time of construction.* All on-site facilities must be coordinated with the bike facilities/pedestrian/multimodal facilities of the surrounding area. Bike facilities, and pedestrian facilities, and multimodal facilities in a proposed development must connect to existing facilities on adjacent property. Where facilities do not exist on adjacent property the development must provide for future connection(s), including necessary easement(s). Pedestrian, bicycle, and multiuse facilities along non-buildable lots, common areas, stormwater ponds, and other similar areas must be constructed by the developer prior to issuance of a certificate of compliance for the infrastructure unless the developer posts a bond or other surety acceptable to the city as assurance of completion of the improvements. Pedestrian, bicycle, and multiuse facilities along buildable lots will be the responsibility of the lot owner and must be constructed prior to issuance of a certificate of occupancy for any building on the lot. To ensure compliance, the covenants for the development must reflect that the lot owner must construct the required pedestrian, bicycle, and multiuse facilities facility prior to requesting a certificate of occupancy.
- (d) *Construction standards.*
 - (1) *General.*
All roadways must be designed in accordance with the roadway cross sections in LDC Section 3-302 complete streets design requirements set forth in LDC Section 3-303, in accordance with the Americans with Disabilities Act (ADA) Accessibility Guidelines, and applicable administrative codes.

- a. Curb cut ramps (wheelchair ramps) are required at all intersections where pedestrian facilities ways intersect roadway curb and gutter. Curb ramps may not exceed twelve foot horizontal to one foot vertical and must have a slip-resistant surface texture.
- b. ~~Bike and pedestrian facilities.~~ A minimum 72-inch-wide pathway, clear of obstacles, must be maintained within a bike facility or pedestrian facility (sidewalk six feet or less). Bike facilities and pedestrian facilities narrowed for some distance to the 36-inch minimum by the installation of a permanent obstacle must provide a passing space of at least 60 inches long by 60 inches wide every 200 feet. Permanent obstacles such as utility poles, signs, and similar items located within the pedestrian facility on city-maintained streets must maintain a minimum eight-foot height clearance above the pedestrian facility.
- c. If permanent obstacles such as utility pole signs, mailboxes, and similar items are located within a bike facility that is wide enough to accommodate two-way bike traffic on a city-maintained street, then a minimum eight-foot-wide pathway must be maintained within the bike facility.
- d. Bike facilities, and pedestrian facilities, **and multimodal facilities** must be located in the rights-of-way or within adjacent easements of interior or perimeter streets. However, the facility **facilities** may not be closer than one foot to an abutting property line. Sufficient distance from obstacles such as mailboxes, fire hydrants, drainage inlets, manholes, utility structures and streets must be maintained for the safety of ~~the bike facility or pedestrian facility users~~. Where preventable, pedestrian facilities should not be located within the recovery area of the traveled way of the street.
- e. There must be no unsafe curves or sudden elevation changes in the bike facility, ~~or pedestrian facility~~, **or multiuse facility** that would present a hazard to the user. All developments or redevelopments must be designed with bicycle and pedestrian street crossings at traffic-control signals, crosswalks, or intersections.

(2) *Off-site facilities.*

- a. ~~On-road.~~ Where the Bicycle and Pedestrian Master Plan shows the use of bike lanes **are installed** adjacent to the roadway, ~~these the~~ lanes must be constructed in compliance with the ~~roadway cross sections set forth in 3-302.~~ **complete streets design requirements set forth in LDC Sections 3-303.**
- b. *Off-road.* All **off-road** bike facilities, and pedestrian facilities, **and multimodal facilities** constructed off-site or along a street perimeter to the development must be eight feet in width and constructed of either:
 1. Four-inch-thick Portland cement concrete, or
 2. A minimum 1½-inch asphaltic concrete of FDOT type S-III on a four-inch limerock base and six-inch type B sub-grade.

For facilities constructed of Portland cement concrete, all driveway crossings must be a minimum of six inches thick. The applicant may submit an alternate design, subject to the approval of the city manager or designee; provided it is structurally equal to, or better than, the options set forth above.

(3) *On-site facilities.* All sidewalks constructed within the development must be a minimum of six feet in width and constructed of either:

- a. Four-inch-thick Portland cement concrete, or
- b. A minimum of 1½-inch asphaltic concrete of FDOT type S-III on a four-inch limerock base and six-inch type B sub-grade.

For facilities constructed of Portland cement concrete, all driveway crossings must be a minimum of six inches thick. The applicant may submit an alternative design, subject to the approval of the city manager or designee, provided it is structurally equal to, or better than, the options set forth above.

- (e) *Maintenance.* On-site bikeways and pedestrian ways must be maintained by the property owners' association through the operation and maintenance covenants. The city public works department will maintain bikeway and pedestrian way facilities located within city-~~maintained~~ rights-of-way. The city public works department will also maintain off-site bikeway, and pedestrian, ~~and multiuse~~ way facilities, constructed adjacent to the on-site property within a perpetual non-exclusive right-of-way easement upon acceptance by the City Council.
- (f) *Waiver of requirement.*
 - (1) Any waiver of requirement is subject to approval by the city manager or designed. Notwithstanding the provisions of subsections (a) through (e) of this section, bikeways, and pedestrian, ~~and multiuse~~ way facilities will not be required where it can be demonstrated that: ~~the city manager or designee determines that:~~
 - a. Their establishment would be contrary to public safety;
 - b. The cost would be excessively disproportionate to the need or probable use; and
 - c. Other available means or factors suggest an absence of need.
 - (2) A funds-in-lieu contribution of the equivalent cost of construction of the site-related improvements ~~s~~ must be paid prior to the issuance of any development order approval as a condition of approval of the waiver of requirement. The amount of the funds shall be determined ~~based on an administrative code for construction of bicycle and pedestrian facilities.~~ in accordance with the fee-in-lieu contribution schedule of AC-06-11-04, as it may be amended
- (g) *Special standards for large-scale retail establishments.*
 - (1) *Applicability.* The following requirements are in addition to the sections above. Large-scale retail establishments must be designed to accommodate safe and convenient pedestrian and bicycle access within the development, in accordance with the following:
 - a. Sidewalks must be provided internal to the site to provide pedestrian and bicycle connectivity between external sidewalk systems, and bike lanes, ~~and multiuse facilities~~ along adjacent roadways and the internal parking areas and buildings. Crosswalks must be provided internal to the site where sidewalks cross parking areas or driveways.
 - b. All sidewalks and crosswalks internal to the site shall be distinguished from driving surfaces through the use of durable, low maintenance surface material(s), such as pavers, bricks, or scored concrete.
 - c. Sidewalks must be provided along the full length of the building along any facade featuring a customer entrance, and along any facades abutting public parking areas. Sidewalks in these locations must be a minimum of eight feet in width and

located at least six feet from the facade of the building to provide for building perimeter plantings, street furniture, and other required features. For outparcels, this requirement is reduced to a six-foot sidewalk located at least two feet from the facade of the building.

- d. Bicycle racks **and respite facilities** must be located outside of the parking lots, and within one hundred feet of the main entrance(s) of the large-scale retail establishment. Bicycle racks must provide a minimum of one bicycle parking space per 5,000 square feet of building area.

(Ord. No. 05-03, § 1(3-256), 1-19-2005; Ord. No. [14-18](#), § 1, 7-2-2014; Ord. No. [14-025](#), § 1, 10-15-2014; [Ord. No. 18-05, § 1, 5-16-2018](#))

DIVISION 6. - OPEN SPACE, BUFFERING AND LANDSCAPING

Footnotes:

--- (3) ---

State Law reference— Florida friendly landscaping, F.S. §§ 166.048, 373.185, 373.228; landscape architecture, F.S. § 481.301 et seq.; fertilizer, F.S. § 576.011 et seq.

Sec. 3-414. - Title and citation.

This division will be known and cited as the "City of Bonita Springs Landscape Code."

.....

(b) *Indigenous native vegetation.*

(1) Preservation.

- a. Large developments, with existing indigenous native vegetation, must provide 50 percent of their open space percentage requirement through the on-site preservation of existing indigenous native vegetation. Refer to section 3-523. A minimum setback of 30 feet is required from any habitable structure.
- b. If the development area does not contain existing indigenous native vegetation communities, but does contain existing indigenous native trees, then 50 percent of their open space percentage requirement must be met through the on-site preservation of existing native trees consistent with subsections (b)(1)b.1 through 4 of this section. Refer to Appendix A of this chapter.
 1. Preservation of indigenous tree clusters is preferred over individual tree protection. Reasonable efforts to retain individual trees must be made. It is recognized that site design requirements (e.g., fill) may limit the ability to retain some individual trees, and in that case the city will allow the removal of those trees.
 2. Sabal palms may be relocated in a horticulturally correct manner and clustered within open space areas.
 3. Native trees (four-inch caliper dbh or greater) may be relocated to open space areas when proper horticultural methods (e.g., root pruning; use of anti-transpirants) are utilized to ensure the survivability of the trees.
 4. Effort must be made to preserve heritage trees (indigenous trees or palms with a 20-inch or greater caliper dbh) (live oak, South Florida slash pine, or longleaf pine with minimum 20-inch caliper dbh). If a heritage tree must be removed from a site, then an approved replacement species tree with a minimum 20-foot height and 4-inch or greater caliper dbh must be planted within an appropriate open space area.

(2) Tree advisory board review.

- a. The tree advisory board may make recommendations to applicants and staff, concurrent with the zoning process and prior to the issuance of the development order, who may suggest modifications to the master concept plan. The tree advisory board's final

recommendation may not take longer than 60 days from the date the matter is placed on their agenda, unless agreed to by the applicant.

- b. If the review is required as a zoning condition prior to the issuance of the development order, staff may approve administrative deviations to the parking plan or site layout upon input from the tree advisory board. Alternatively, if the staff believes the deviation exceeds the staff's designated authority, the staff may request the city council's concurrence that an administrative deviation is the best practice to promote the preservation of a heritage tree. Any request for city council concurrence will be considered at a regular city council meeting, with regular notice of the agenda (no special advertisement or public notice to parties of record). If city council determines the deviation warrants a public hearing resulting from changes in the parking plan or site layout, the applicant shall file for an amendment to their planned development through chapter 4.

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Sec. 3-418. - Landscape standards.

- (c) *Landscaping of parking and vehicle use areas.* The provisions of this section apply to all new off-street parking or other vehicular use areas. Existing landscaping that does not comply with the provisions of this LDC must be brought into conformity, to the maximum extent possible, when: the vehicular use area is altered or expanded except for re-striping or seal-coating of lots/drives, the building square footage is changed, or the structure has been vacant for a period of one year or more and a request for an occupational license to resume business is made. Consistent with the provisions of section 3-81, the city manager or designee may permit administrative deviations where a conflict exists between the application of this division and the requirements for the number of off-street parking spaces or area of off-street loading facilities.
 - (1) *Vehicular overhang of landscape areas.* The front of a vehicle may overhang any landscaped area a maximum of two feet; provided the landscaped area is protected by motor vehicle wheel stops or curbing. Two feet of such landscaped area or walkway may be part of the required depth of each abutting parking space. Walkways must be designed with a minimum of five feet width that is clear of any vehicle overhang.
 - (2) *Internal landscaping.* All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:
 - a. Trees must be planted or retained in parking areas, including landscaped areas reserved for future parking spaces, to provide for canopy coverage when the trees mature. Trees in parking areas must have an average mature spread of 30 feet or more. At least one tree must be planted or retained for every 250 square feet of required internal planting area, and no parking space may be more than 65 feet from a tree planted in a permeable island, peninsula, or median of fifteen-foot ~~ten-foot~~ minimum width.
 - b. Landscaped areas on the parking area perimeter or internal islands must equal or exceed a minimum of ten percent of the total paved surface area. Landscaped areas reserved for future parking spaces pursuant to section 4-1729(d) may not be included in this calculation.

- c. The minimum average dimension of any required internal landscaped area must be five feet.
- d. No more than an average of ten parking spaces must occur in an uninterrupted row unless divider medians, as specified in subsection (c)(2)f of this section, are used. Where existing trees are retained in a landscape island the amount of parking spaces in that row may be increased to 15; provided that the 65-foot minimum distance from a shade tree is maintained.
- e. Each row of parking spaces must be terminated by landscaped islands that measure not less than five feet in width, and not less than 18 feet in length. Curbing is strongly encouraged. If terminal islands are used for required canopy trees, they must be a minimum of fifteen feet or greater ~~ten feet~~ in width.
- f. Optional divider medians may be used to meet interior landscape requirements. If divider medians are used, they must form a landscaped strip between abutting rows of parking spaces. The minimum width of a divider median must be five feet. One tree must be planted for each 40 linear feet of divider or fraction thereof. Trees in a divider median may be planted singly or in the case of palm trees in clusters. The maximum spacing of trees must be 60 feet.
- g. All interior landscaped areas not dedicated to trees or to preservation of existing vegetation must be landscaped with grass, ground cover, shrubs, or other approved landscaping materials, and this must be so noted on the landscape plans. Sand, gravel, rock, shell, artificial turf, or pavement are not appropriate landscape materials.
- h. Light poles must be located outside of all parking islands that contain required trees. Light poles and associated utility boxes (fixtures) may be placed in oversized landscape islands with the landscaping required in this code; however, in the event of a conflict between the required landscaping and the utility fixtures, the utility fixtures shall be altered instead of canopy trees being trimmed and/or removed other than what is permitted within this code.

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Sec. 3-422. - Plant material standards.

- (a) *Quality.* Plant materials used to meet the requirements of this division must meet the standards for Florida No. 1 or better, as set out in Grades and Standards for Nursery Plants, Parts I and II, Department of Agriculture, State of Florida (as amended). Root ball sizes on all transplanted plant materials must also meet state standards.
- (b) *Native varieties.* At least 75 percent of the trees and ~~75~~ 50 percent of the shrubs used to fulfill these requirements must be native Florida species.
- (c) *Species requirements.* A minimum of four separate tree and palm species, and a minimum six separate shrub, hedge and/or groundcover species must be used to meet the requirements of this division.

(d) Location requirements. The native variety and plant material selection requirements of this division may extend across the entirety of a site with consideration of site design as it relates to required plantings growth habit, viewsheds, signage, overhead power lines, utilities, lighting, and vehicle and pedestrian circulation.

(e) ~~(e)~~ Trees and palms.

- (1) Code-required trees, at the time of installation, must be a minimum of ten feet in height, have a two-inch caliper 12 inches above the ground and a four-foot spread. Palms must have a minimum of eight feet of clear trunk at planting. Palms may be used in place of trees at the rate of one palm for one tree for buffer and general tree requirements. Palms with a canopy less than 20 feet shall be clustered in groups in a minimum of three. Palms may only be used to meet 30 percent of the code-required trees. Small trees such as dahoon hollies that have an average mature spread or crown less than 20 feet may be substituted by grouping the same so as to create the equivalent of a 20-foot crown spread. Trees adjacent to walkways, bike paths and rights-of-way must be maintained with eight feet of clear trunk. Palms must be properly staked at installation.
- (2) Larger trees substituted to reduce the minimum number of general trees, without the use of an alternative landscape betterment plan, must be no less than four inches in diameter at 12 inches above the ground, and no less than 16 feet in height at the time of planting. The general tree requirement cannot be reduced in number by more than 50 percent.

(f) ~~(d)~~ Shrubs and hedges. Shrubs must be a minimum of 24 20 inches (48 inches for type F buffers) in height, above the on-site adjacent pavement or parking surface required to be buffered and/or screened, when measured at time of planting. They must be a minimum three-gallon container size and be spaced 18 to 36 inches on center. They must be at least 36 inches (60 inches for type F buffers) in height within 12 months of the time of planting and maintained in perpetuity at a height of no less than 36 inches (60 inches for type F buffers) above the adjacent pavement required to be buffered and/or screened, except for visibility at intersections and where pedestrian access is provided. Required hedges must be planted in double staggered rows and maintained so as to form a continuous, unbroken, solid visual screen within a minimum of one year after the time of planting.

(g) ~~(e)~~ Mulch requirements. A two-inch minimum layer, after watering-in, of mulch or other recycled materials must be placed and maintained around all newly installed trees, shrubs, and groundcover plantings. Each tree must have a ring of mulch starting no closer than six inches from the trunk to no less than 24 inches beyond its trunk in all directions. No more than a one-inch layer of mulch may be placed within the first six inches from the trunk. The use of cypress mulch is strongly discouraged.

(h) ~~(f)~~ Invasive exotics. The following highly invasive exotic plants must be removed from the development area. Methods to remove and control invasive exotic plants must be included on the development order plans. A statement must also be included on the development order that the development area will be maintained free from invasive exotic plants in perpetuity. For purposes of this subsection, invasive exotic plants include:

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Sec. 3-423. - Plant installation and maintenance standards.

(a) *Installation.*

- (1) Plant materials must be installed in soil conditions that are conducive to the proper growth of the plant material. Limerock located within planting areas must be removed and replaced with native or growing quality soil before planting.
- (2) A plant's growth habit must be considered in advance of conflicts that might be created (e.g., views, signage, overhead power lines, lighting, circulation). Trees may not be placed where they interfere with site drainage, subsurface utilities, or overhead utility lines, or where they will require frequent pruning in order to avoid interference with overhead power lines. Landscape designers must consult FP&L's guidelines for planting in and around power lines.
- (3) At the time of planting, a root barrier shall be installed, and maintained thereafter, for all required vegetation placed within ten feet of any adjacent structures, utilities, sidewalks, driveways, or infrastructure.
- (4) ~~(3)~~ All landscape materials must be installed in a recognized horticulturally correct manner. At a minimum, the following installation requirements must be met:
 - a. All required A minimum of 75 percent of plantings must utilize Florida-friendly design standards "right plant right place" practices.
 - b. All landscape areas must be mulched unless vegetative cover is already established.
 - c. Trees and shrubs used in buffers must be planted in a minimum width area equal to three-quarters ~~one-half~~ the required width of the buffer. However, in no case may the planting area be less than five feet in width.
 - d. All landscaped areas must be provided protection from encroachment by any type of vehicle.
 - e. All required plants used in buffers and landscaping must be installed using xeriscape principles. Xeriscape principles include water conservation through drought-tolerant landscaping, the use of appropriate plant material, mulching, and the reduction of turf areas.
 - f. Utility, power, or drainage easements may not overlap with required buffers; ~~however, no~~ No required trees or shrubs may be located in any utility, power, or street easement or right-of-way, unless otherwise approved. To avoid conflicts with overhead utility lines on existing sites, ~~only~~ smaller trees, less than 20 feet in height at maturity, may be used directly adjacent to overhead lines.
 - g. Safe sight distance triangles at intersections and vehicle connections. Where an access way intersects a right-of-way or when a property abuts the intersection of two or more rights-of-way, a minimum safe sight distance triangular area must be established. Within this area, vegetation must be planted and maintained in a way that provides unobstructed visibility at a level between 30 inches and eight feet above the crown of the adjacent roadway. Landscaping must be located in accordance with the roadside recovery area provisions of the state department of transportation's Manual of Uniform Minimum Standards for Design, Construction, and Maintenance of Streets and Highways (FDOT Green Book) where appropriate.

Sec. 3-535. Piping materials for use in right-of-way.

Approved utility piping materials for use in rights-of-way are as follows:

	Concrete	Plastic Type	Clay	CI/DI	Steel	Aluminum
<i>Lines in traveled way:</i>						
Water	No	Yes ⁽³⁾⁽⁶⁾⁽⁸⁾⁽⁹⁾	No	Yes	No	No
Sewer force main	No	Yes ⁽⁴⁾⁽⁶⁾⁽⁸⁾⁽⁹⁾	No	Yes	No	No
Stormwater drain	Yes	No <u>Yes</u>	No	No	No	No
Sewer gravity main	No	Yes ⁽⁵⁾	Yes	Yes	No	No
Utility conduit	Yes	Yes ⁽²⁾⁽⁶⁾	No	Yes	No	No
<i>Lines in right of way:</i>						
Water	No	Yes ⁽³⁾⁽⁸⁾	No	Yes	No	No
Sewer force main	No	Yes ⁽⁴⁾⁽⁸⁾	No	Yes	No	No
Stormwater drain	Yes	Yes ⁽⁷⁾	No	No	Yes ⁽⁴⁾	Yes
Sewer gravity main	No	Yes	Yes	Yes	No	No
Utility conduit	Yes	Yes ⁽²⁾	No	Yes	Yes	Yes
Stormwater lines in drainage easement	Yes	No	No	No	Yes ⁽⁴⁾	Yes

Notes:

⁽⁴⁾ Asphalt-coated, or aluminum-clad; corrugated pipe with approved connections.

⁽²⁾ Encased in concrete, if in banks more than one layer, otherwise SDR 26, ASTM 2241 or AWWA C 900 or thicker.

⁽³⁾ SDR 18 Type I, Grade I, or thicker only.

⁽⁴⁾ SDR 26, ASTM 2241 or AWWA C 900 or thicker.

⁽⁵⁾ SDR 35 or thicker only (ASTM 3034).

⁽⁶⁾ In steel casing.

⁽⁷⁾ ASTM D3350, AASHTO M294.

⁽⁸⁾ High Density Polyethylene (HDPE) DR11.

⁽⁹⁾ High Density Polyethylene (HDPE) DR11 Casing Pipe.

		Concrete	Plastic Type	DI	Steel	Aluminum	HDPE
<u>Lines in traveled way:</u>							
	<u>Water</u>	No	Yes (2)	Yes (2)	No	No	Yes (2)
	<u>Sewer force main</u>	No	Yes (2)	No	No	No	Yes (2)
	<u>Sewer gravity main</u>	No	Yes (2)	No	No	No	No
	<u>Reuse main</u>	No	Yes (2)	Yes (2)	No	No	Yes (2)
	<u>Stormwater drain</u>	Yes	Yes (3)(5)	No	No	No	Yes (3)(5)
	<u>Utility conduit</u>	Yes	Yes (1)	Yes	Yes	Yes	Yes (1)
<u>Lines in right-of-way:</u>							
	<u>Water</u>	No	Yes (2)	Yes (2)	No	No	Yes (2)
	<u>Sewer force main</u>	No	Yes (2)	No	No	No	Yes (2)
	<u>Sewer gravity main</u>	No	Yes (2)	No	No	No	No
	<u>Reuse main</u>	No	Yes (2)	Yes (2)	No	No	Yes (2)
	<u>Stormwater drain</u>	Yes	Yes (3)	No	Yes (4)	Yes (4)	Yes (3)
	<u>Utility conduit</u>	Yes	Yes (1)	Yes	Yes	Yes	Yes (1)
	<u>Stormwater lines in drainage easement</u>	Yes	No	No	Yes (4)	Yes (4)	No

(1) Encased in concrete, if in banks more than one layer; otherwise, SDR 26, ASTM 2241 or DR 25 AWWA C 900, DR17 HDPE, or thicker.

(2) In accordance with all requirements, specifications, and design manual of the utility service area provider (including all casing pipe requirements).

(3) In compliance with the latest edition of the FDOT Standards for Road and Bridge Construction and related indexes, including, but not limited to, supplemental specifications, standard modifications and approved materials list.

(4) Not on City or County-maintained roads.

(5) Not on City or County-maintained arterial or collector roads.

(Ord. No. 05-03, § 1(3-716), 1-19-2005)

DIVISION 18. HOME-BASED BUSINESSES OCCUPATIONS

Sec. 4-1495. Intent of division.

It is the intent of this division to allow the operation of home-based businesses by right in all districts permitting dwelling units, but to regulate them so that the average neighbor, under normal circumstances, will not be disturbed or inconvenienced by them, except as pre-empted by Florida Statute 559.955, as may be amended. For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property.

(Ord. No. 11-02, § 3(4-1771), 1-19-2011)

Sec. 4-1496. Permitted uses; operation.

- (a) Any use of a residence for a home occupation must be clearly incidental and subordinate to its use for residential purposes by the occupants.
- (b) The use must be conducted entirely within the dwelling unit or customary accessory building. As viewed from the street, the use of the residential property shall be consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.
- (c) No employees other than members of the immediate family residing in the dwelling may be permitted to work at the residence, but may be employed to work elsewhere; provided that the employees do not come to the residence for equipment, vehicles, or supplies. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may allow one employee who is not a resident of the home to work at the residence. The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to two employees or independent contractors who do not reside at the residential dwelling, may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
- (d) There may be no exterior indication that the dwelling is used for any purpose other than a residence, except that one non-illuminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.
- (e) No commodities, stores or display of products on the premises may be visible from the street or surrounding residential area. No outdoor display or storage of materials, goods, supplies or equipment used in the home-based business may be permitted on the premises. Parking related to the business activities of the home-based business must comply with applicable zoning requirements, and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted.
- (f) No equipment or process may be used which creates noise, vibration, glare, fumes, odors or electrical interference objectionable to the normal senses. No equipment or process may be used which creates visual

or audible interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.

~~(g) No use permitted by this division may generate greater volumes of traffic than would otherwise be expected by normal residential uses.~~

~~(h) No use that attracts customers to the dwelling unit may be permitted under this section.~~

(Ord. No. 11-02, § 3(4-1772), 1-19-2011)

~~Sec. 4-1497—Home occupation with outside help.~~

~~(a) Approval required. The director of community development may administratively approve home occupations with outside help, as specified in the zoning district regulations, if the proposed use satisfies the requirements set forth in this division.~~

~~(1) Home occupations with outside help shall be limited to one employee or partner on the premises during the hours between 9:00 a.m. and 5:00 p.m., Monday through Friday.~~

~~(2) Home occupations with outside help shall be limited to two vehicle parking spaces for business-related purposes upon demonstration that there is adequate off-street parking at the residence to accommodate the vehicle.~~

~~(3) The resident of the premises shall not rent space to others in association with a home occupation.~~

~~(b) Application. An applicant for home occupation with outside help must submit the following information on the form provided by the city:~~

~~(1) The name, address and telephone number of the applicant.~~

~~(2) A notarized authorization from the property owner to apply for the permit.~~

~~(3) Location by STRAP and street address.~~

~~(4) Type of home occupation being requested.~~

~~(5) A site plan, drawn to scale showing:~~

~~a. The property in question, including all buildings on the property and adjacent property.~~

~~b. The location of business-related parking spaces.~~

~~(c) Findings by director. Prior to permit approval, the director must conclude all applicable standards have been met. In addition, the director must make the following findings of fact:~~

~~(1) The home occupation shall not be detrimental to the surrounding residential neighborhood by causing increased noise, traffic, lighting, odor, or by violating any applicable ordinances or laws.~~

~~(2) The home occupation use and operation shall be consistent with adjacent permitted residential uses.~~

~~(3) There is adequate off-street parking to accommodate the business-related vehicles.~~

Secs. 4-1498—4-1527. Reserved.

Sec. 4-2153. Applicability, purpose and intent.

- (a) *Applicability.* The City of Bonita Springs recognizes that this use is temporary and mobile in nature. These regulations are intended to define the locations and development standards for a site to be permitted for mobile food vendors. The standards established in these regulations are intended to allow mobile food vendors to operate while mitigating impacts to the site in which they operate and adjacent properties and right-of-ways. These regulations do not address mobile food carts, or mobile vendors that visit sites to temporarily vend for a period of minutes and not days or hours (i.e. ice cream trucks, construction or work site vendors). These vehicles are permitted by other agencies and cannot operate in the same manner as a mobile food vendor.

Permit required. No mobile food vendor location is permitted without an approved permit. Such a permit **may** only address the location. Food vendors are required to provide evidence of all applicable inspections and permits with the city and not permitted or registered through this subdivision.

- (b) Property owners that have a fixed (stationery) mobile food vendor permitted before January 1, 2013, and have made substantial improvements to the property (obtained development orders and expended at least \$10,000.00 in site improvements) may continue to have a mobile food vendor on that site for eight years from adoption of the ordinance from which this subdivision is derived, subject to loss of nonconforming status per section 4-2320 et seq. The community development director may grant a two year extension to the property owner. Property owner may replace the mobile food vendor, who may remain as originally permitted. Any new mobile food vendor located at the site must comply with section 4-2156 except for the duration and physical movement of the vendor.

(Ord. No. 13-02, § 1(4-3061), 2-20-2013; Ord. No. 20-05 , § 2, 10-7-2020)

Sec. 4-2154. Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commissary means an approved facility that provides support services for specific required functions of a mobile food vendor, including, but not limited to, mobile food vehicles and mobile food carts. Any food establishment permitted or licensed by a regulatory agency, such as a catering operation, restaurant, grocery store or similar establishment or any otherwise approved facility by FDACS in which food, containers, or supplies are kept, handled, prepared, packaged or stored can be considered for approval as a commissary. When not required at the mobile food establishment, commissaries may provide a three compartment sink for washing, rinsing and sanitization of equipment/utensils in addition to hand wash and rest room facilities. Services required of the commissary will be based on the food sold and the mobile food establishment type and capabilities. A private residence may not be used as a commissary (See Chapter 500, Florida Statutes).

Food stand means a temporary, non-motorized food unit with limited infrastructure, which serves food and/or beverage intended for immediate consumption and does not provide indoor seating.

Mobile food cart means any non-motorized mobile food unit with limited infrastructure, which serves food and/or beverages intended for immediate consumption. Mobile food carts may not exceed six feet in length, three feet in width (exclusive of wheels), or four feet in height (exclusive of wheels and umbrellas).

Mobile food vehicle means a motorized mobile food unit, which may be self-sufficient in terms of potable water, sanitary sewer and electric utilities, and generally consists of an enclosed truck, trailer or similar vehicle, where food may be stored, prepared, cooked, and/or served. An open bed truck, van or converted automobile is not considered a mobile food vehicle and is not eligible for a mobile food vending permit pursuant to this division.

Mobile food vendor means any person or business selling foods other than fresh fruits or vegetables from a mobile food vehicle, mobile food cart or food stand.

Mobile food vendor park means a site approved through a special exception to allow for permanent location for three or more mobile food vehicles. Such sites must include required infrastructure and generally include public seating for all vehicles serving in the park.

(Ord. No. 13-02, § 1(4-3062), 2-20-2013; Ord. No. 20-05 , § 2, 10-7-2020)

Sec. 4-2155. Permit required.

No mobile food vendor shall be permitted to operate within the city unless a permit has been obtained for the proposed location upon which the vendor will operate.

Permit submittal requirements:

- (1) Completed application.
- (2) Signed authorization from the property owner or authorized representative.
- (3) Proof of insurance for the property, issued by an insurance company that is licensed to do business in the state. Proof of business insurance, issued by an insurance company that is licensed to do business in the state, protecting the applicant from all claims for damages to property and bodily injury, including death, which may arise from operations under, or in connection with mobile food vending. Such insurance shall name the city as an addition insured party and shall be in at least the amount of \$500,000.00 for occurrence for injury and \$200,000.00 per person.
- (4) Site plan based on a valid survey, approved development order, or master concept plan with dimensions and infrastructure identified, including the proposed location of the mobile food vendors. For large or phased projects, the plan submitted must provide enough detail to determine pedestrian and vehicular access to a public right-of-way.
- (5) All sidewalks, driveways, rights-of-way, parking areas, outdoor seating areas, buildings with entry locations.
- (6) A statement declaring if biodegradable packaging will be utilized, and if not, why.
- (7) If required parking spaces are to be utilized, the times businesses use those spaces and the proposed time they would be used for mobile food vending.
- (8) If portable sanitary facilities (port-o-lets) are proposed for compliance with LDC 4-2156(15)(a), the location shall be shown on the site plan. Port-o-lets are prohibited to be placed in landscape buffers, required open space areas, required parking spaces, drive aisles, or pedestrian access ways and shall not be placed closer to a roadway than the proposed mobile food vendor location. A cleaning and maintenance plan is required to be submitted as part of the application and will be enforced as part of a potential approval.

Non-compliance with permit:

- (1) If a permit holder is found to operating inconsistent with the standards of the permit, as documented by a violation notice or conviction from the Bonita Springs Hearing Examiner, the permit may be suspended or revoked by the city council after hearing evidence of the violation in a public hearing. The burden to maintain the permit will be with the permit holder.

(Ord. No. 13-02, § 1(4-3063), 2-20-2013; Ord. No. 20-05 , § 2, 10-7-2020)

Sec. 4-2156. General standards.

- (1) Locations must not interfere with vehicular, multi-modal, pedestrian access and access ways.
- (2) Cannot be located in a required parking space or driveway, unless it is specifically demonstrated the parking or driveway is not used during the time and/or days the mobile food vendor location is permitted.
- (3) A mobile food vendor cannot install or create features, signs, or other identification not utilized while driving, that extend more than three feet from the vending vehicle in any direction.
- (4) Must be located on property or within a development with completed infrastructure improvements.
- (6) All mobile food vendors shall be located in areas and in a manner that they do not create an adverse view or vista. More specifically, the food truck or anything associated with its operation shall block the view of signs or vehicular or multi-modal access ways.
- (7) No more than two mobile food vendors can be requested on a single site. For purposes of this specific requirement, a site includes an entire commercial development even if that development consists of more than one parcel.
- (8) A mobile food vehicle cannot be permitted within 250 feet of another permitted location, or mobile food vendor park. This separation requirement will not reduce or amend locational standards for particular overlay districts.
- (9) Permitted sites will have the mobile food vendor removed at the end of permitted operating hours.
- (11) Cannot be located on the site of an active, or abandoned gas station or convenience store.
- (12) Alcohol shall not be sold or consumed from a mobile food vendor.
- (13) Advertising signs may be permitted upon the mobile food vendor, but there will not be additional signage installed in any other location.
- (14) Notification will only be provided by courtesy mailing for property owners within 1,000 feet and be the responsibility of the applicant. The mailing list and copy of notification will be provided to the city. ~~The request for approval will also be listed on the advertised city council agenda.~~
- (15) Property owner responsibilities will include; and
 - (a) Provision of sanitary facilities consistent with the standards of the Florida Building Code while considering aesthetics of the site; and
 - (b) The responsibility to ensure vendors meet all applicable federal, state, and local statutes, regulations, laws, ordinances, rules and codes; and
 - (c) Acknowledgement that the regulations governing mobile food vendors hold the vendor and property owner responsible for violations of code.
 - (d) Ensure that the property (both the subject site, and other properties that may be directly impacted by mobile food vending) be kept in a continuously neat, clean, and orderly manner.

(Ord. No. 13-02, § 1(4-3064), 2-20-2013; Ord. No. 20-05 , § 2, 10-7-2020)

Sec. 4-2157. Prohibited locations.

- (a) Mobile food vending is prohibited on all parcels zoned for residential uses ~~within a residential zoning district or parcels with existing residential uses~~, except as authorized under this Code pursuant to the special event or temporary use permit. Notwithstanding, mobile food vending may also be authorized at clubhouse or

other portion of a residential community separate from the residences with the authorization of the homeowners association.

- (b) Mobile food vending is prohibited on Little Hickory Island, except as authorized under this Code pursuant to the special event or temporary use permit.
 - (c) Mobile food vending is prohibited within the Downtown District on the future land use map except as authorized in LDC Section 4-868 and under this Code pursuant to a special event or temporary use permit.
- (Ord. No. 13-02, § 1(4-3065), 2-20-2013; Ord. No. 20-05 , § 2, 10-7-2020; Ord. No. 21-02 , § 2(Exh. A), 5-19-2021)

Sec. 4-2158. Temporary event/use permit.

- (a) *Intent; applicability.* It is the intent of this section to require mobile food vendors to obtain a temporary use permit for vending at the specific location where an event is held. This section pertains to, but is not limited to the following events:
 - (1) Grand openings or open houses at residential, commercial or industrial developments;
 - (2) Special outdoor holiday or celebration events;
 - (3) Political rallies or events;
 - (4) Block parties; and
 - (5) Carnivals.
- (b) *Limitations.* If the event for which the temporary permit is sought continues for longer than three days, the applicant may petition the director for an extended permit. A temporary use permit may not be issued for more than ten days.
- (c) *Procedure for approval.* The following is the procedure for requesting approval of mobile food vendor temporary use permit.
 - (1) Any mobile food vendor seeking approval of a temporary use permit must submit a written request to the department of community development. The written request must include:
 - a. The name and address of the applicant;
 - b. A general description of the event and exact site where food and/or beverages are to be sold and consumed;
 - c. The type of food and beverages to be sold and consumed;
 - d. Proposed hours of operation; and
 - e. A fee in accordance with the adopted fee schedule.
 - (2) The director will render a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.

(Ord. No. 13-02, § 1(4-3066), 2-20-2013)

Sec. 4-2159. Mobile food vendor park.

Applicability. This applies to any location that intends to provide permanent locations for mobile food vendors either through dedicated parking within an existing facility, or the creation of parking for such purpose. It

is the permanent nature and not the number of mobile food vendors that distinguishes a mobile food vendor park from temporary mobile food vendor locations.

General standards:

- (1) Must provide stabilized surface for the parking of the intended number of mobile food vendors
- (2) Central water and sewer must be provided for all mobile food vendors and the general public.
- (3) A mobile food vendor park can only co-locate on a site with existing uses if the tenants of those legal uses sign a no objection form
- (4) Any accessory structures, seating areas, pedestrian access must be specifically approved as part of the submitted plan.
- (5) There shall be no more than one mobile food vending park within 250 feet of another permitted park or mobile food vending location. This separation requirement will not reduce or amend locational standards for particular overlay districts.
- (6) Parking will be provided at three spaces per mobile food vendor, plus one additional parking space per 15 seats.
- (7) Restroom facilities will be required based on the standards of the Florida Building Code.
- (8) Cannot be located on the site of an active, or abandoned gas station or convenience store.
- (9) A food truck site will not be permitted on Little Hickory Island or within the downtown district on the future land use map as provided by section 4-2157.
- (10) Neighborhood meetings are required consistent with Bonita Springs LDC 4-28.
- (11) Public notice will include courtesy mailed notices for property owners within 2,000 feet for both zoning board and city council hearings.
- (12) Mobile food vendors may have advertising on their vehicles, however, signage for a mobile food vending park must be consistent with the standards of Bonita Springs Land Development Code Chapter 6.

Permit submittal requirements:

- (1) Mobile food vendor parks may only be approved through a special exception permit.
- (2) All required submittal requirements for a special exception, and
- (3) For open air central seating areas, an analysis for off-site impacts.
- (4) Analysis for off-site impacts of glare, dust, vibration, and odor on the adjacent and surrounding community.
- (5) For applications with outdoor entertainment, analysis for off-site impacts for noise.

Mobile food vendors:

- (1) For mobile food vendors to locate at an approved location (both an approved site or approved mobile food vendor park), they must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the city.
- (2) Documentation will be submitted to the city through copies or accepted electronic forms.
- (3) Submittal of these documents will not produce a permit and other than maintain evidence of documents for public records, it will not produce a registry or registration.

(Ord. No. 20-05 , § 2, 10-7-2020)

Secs. 4-2160—4-2189. Reserved.

REQUESTED MOTION: Review draft Scope of Services for Lobbying Services RFQ and provide direction to staff.

REQUESTOR: Arleen M. Hunter, City Manager; Carly Sanseverino, Staff Attorney

AGENDA: City Manager's Items

STRATEGIC PRIORITY: #3 Strengthen City Finances and #6 Enhance Council Relations

BACKGROUND:

On August 3, 2022, Council was notified that Capitol Strategies will no longer be providing lobbying services. Pursuant to Council's direction, staff has prepared the attached draft Scope of Services for Council's consideration. The solicitation will provide for qualifications and evaluation criteria such as capabilities, personnel, experience, work load, etc.

If Council approves, staff will issue a competitive solicitation in accordance with the City's procurement policy. Upon the closing of the response period, all responsive proposals will be forwarded to Council for consideration.

STAFF RECOMMENDATION: Council's pleasure.

ATTACHMENTS:

1. Draft Scope of Services

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other_____

GENERAL SCOPE

The City of Bonita Springs seeks to contract with a qualified Vendor to provide a full range of professional lobbying services and advocacy to the Florida Legislature, the Governor, the Cabinet, and executive agencies, offices, commissions, and other governmental units of the State of Florida regarding the City's State legislative agenda, executive branch projects, and other issues as assigned by the City Manager or designee.

1. Vendor shall aid in the development of an annual legislative agenda that clearly and concisely communicates the City's:
 - a. Objectives for funding allocations, grants, and local projects;
 - b. Position on legislation that may pre-empt Home Rule authority;
 - c. Position on specific issues of local interest that may be under debate in committees.
2. Vendor shall consult with the City on specific strategies to effectively:
 - a. Provide a full range of professional lobbying services and advocacy to the Florida legislature, the Governor, the Cabinet, and executive agencies, offices, commissions, and other governmental units of the State of Florida regarding the City's State legislative agenda, executive branch projects, and other issues as assigned by the City Manager or designee.
 - b. Maximize the City's use of State programs and allocations.
3. Vendor shall implement strategies by:
 - a. Attending/monitoring legislative committee meetings, briefings, and hearings during Session and interim committee weeks.
 - b. Regularly briefing City staff and Council Members.
 - c. Identifying opportunities for the City of Bonita Springs to appear before committees, participate in hearings, and submit comments.
 - d. Arranging meetings, if needed, between City representatives, legislative committee members, and State agency staff.
4. Vendor shall monitor, review, and comment on the following:
 - a. Progress of City of Bonita Springs applications, bills, amendments, and proposals.
 - b. Filing of new bills with the potential to affect issues important to the City of Bonita Springs and updating the City's legislative agenda, objectives, and communication strategies, if needed.
 - c. Proposed changes to funding formulas or allocations, agency proposals, administrative rules, and other regulations.
5. Vendor shall take the lead on drafting all letters, briefing sheets and other written communication materials used to promote the City's agenda.
6. Vendor shall be readily available during any Regular, extended, or Special Session to monitor and interpret legislative action, obtain documentation and research materials, and prepare responses.

7. Vendor shall secure sponsorship of bills and/or amendments needed to further the City's legislative agenda.
8. Vendor shall prepare and submit written reports during Session and interim committee weeks regarding progress on the City agenda and objectives. Reporting shall include:
 - a. Bi-weekly reports on activities directly related the City's specific funding, Home Rule authority, and objectives. It is expected that these reports shall focus on the activities of the consultant that specifically relate to the City's agenda and objectives, not on the routine news of what the legislative committees did.
 - b. End-of-session reports to summarize the City's success in accomplishing its agenda objectives, including, but not limited to:
 - i. Project/issue analysis of each agenda item and its objectives.
 - ii. Quantifiable assessment of the benefit/loss to the City for specific allocations, grants, and costs of operation because of new unfunded mandates.
9. Vendor shall provide monthly invoices with reasonably detailed time and appointment report.
10. Vendor shall attend City Council meetings and deliver presentations, as requested by the City at no additional cost to the City.
11. Vendor shall coordinate all efforts with the City Manager to ensure consistent advocacy of City priorities and projects and effectively communicate with the Mayor and City Council Members.
12. Vendor shall comply with all State requirements for ethics and accountability in lobbying activities.

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 22-09-152
September 7, 2022

REQUESTED MOTION: Discussion on the current FY2022-2023 draft budget.

REQUESTOR: Lisa Griggs Roberson, CPA, Director of Financial and Administrative Services

AGENDA: City Manager's Items

STRATEGIC PRIORITY: 7) Government Transparency

BACKGROUND:

Staff will be reviewing the materials previously provided for discussion and City Council's direction in preparation of the September budget hearings.

STAFF RECOMMENDATION: Council's pleasure.

ATTACHMENTS: None

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Debra Filipek
Department Director:	Lisa Roberson

Council Action: Approved ___ Denied ___ Deferred ___ Other_____