



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

CITY COUNCIL MEETING AGENDA

March 2, 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 March 2, 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. Zoning and Land Use Items:
 - A. (Public Hearing) A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A SPECIAL EXCEPTION REQUEST TO ALLOW OUTDOOR CONSUMPTION ON PREMISES, ASSOCIATED WITH A RESTAURANT, GROUP III USE.; LOCATED AT 3601 & 3621 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-03-034)

9. Consent Agenda:

- A. Adopt a resolution authorizing the submittal of the West Coast Inland Navigation District (WCIND) grant application for funds to promote safe navigation and water-based activities. (Green Sheet No. 22-03-033)
- B. Authorize staff to pursue the purchase of the “Skating Banana” bronze sculpture by artist Jack Hill, as recommended by the Art in Public Places Board. (Green Sheet No. 22-03-036)
- C. Approve modification #3 to the contract agreement between the City of Bonita Springs and Florida Department of Emergency Management for the Logan Boulevard Floodway Improvement Project, Phase 1 (4337-265-R). (Green Sheet No. 22-03-037)
- D. Approve modification #3 to the contract agreement between the City of Bonita Springs and Florida Department of Emergency Management for the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1 (4337-271-R). (Green Sheet No. 22-03-038)
- E. Adopt a resolution approving a budget transfer of \$10,000 from the unassigned general fund to the Bonita Blues Festival. (Green Sheet No. 22-03-040)

10. Presentations:

- A. Presentation from Mr. Kurt Spitzer on redistricting process and discussion. (Green Sheet No. 22-03-042)
- B. Presentation from Singhofen & Associates, Inc. regarding stormwater improvements for the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1. (Green Sheet No. 22-03-041)

11. Mayor and Council Member Items:

12. Public Hearings:

- A. A PUBLIC HEARING TO CONSIDER A RESOLUTION OF THE CITY OF BONITA SPRINGS; AMENDING RESOLUTION 21-112 TO ADD ADDITIONAL BUILDING PERMIT APPLICATION FEE REDUCTIONS FOR TRADE, RESIDENTIAL POOL, AND COMMERCIAL POOL PERMITS TO THE COMMUNITY DEVELOPMENT BUILDING PERMIT FEE SCHEDULE; AND PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-03-039)

13. City Attorney’s Items:

14. City Manager's Items:

- A. Adopt Budget Transfer Resolution and approve the proposal from EnviroStruct, LLC from the Construction Manager at Risk Continuing Services agreement in an amount not to exceed \$2,268,632 for Community Park Baseball Complex Phase 2 renovations. (Green Sheet No. 22-03-035)

15. Mayor and Council Member Reports

16. Approval of the Minutes:

- A. February 16, 2022 City Council Workshop
- B. February 16, 2022 City Council Meeting

17. Public Comment

18. Adjournment

REQUESTED MOTION: A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A SPECIAL EXCEPTION REQUEST TO ALLOW OUTDOOR CONSUMPTION ON PREMISES, ASSOCIATED WITH A RESTAURANT, GROUP III USE; LOCATED AT 3601 & 3621 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135; PROVIDING FOR AN EFFECTIVE DATE.

REQUESTOR: Mary Zizzo, Esq., AICP, Planner, Community Development

AGENDA: Public Hearing

STRATEGIC PRIORITY: N/A

BACKGROUND: The requested special exception (SPE20-75174-BOS) is to allow for outdoor consumption on premises at 3601 and 3621 Bonita Beach Road, in association with a Group III restaurant use. LDC Sec. 4-1023 requires a special exception for outdoor consumption on premises for restaurants within 500 feet of residential dwelling units under separate ownership and places of worship, which the site is located within 500 feet of based on the process of measuring, as defined in the LDC.

The Zoning Board for Land Use Adjustments reviewed the request on February 8, 2022, and voted 7-0 to approve the special exception request, as conditioned in the Staff Report. These conditions are also outlined in the draft Zoning Resolution provided.

The full application backup will be viewable online only with the meeting packet. Please contact the Clerk's Office for paper copy requests.

STAFF RECOMMENDATION: Approve, as conditioned.

ATTACHMENTS:

1. Draft Zoning Resolution
2. Draft Zoning Board Meeting Minutes 2-8-2022
3. Staff Report

REVIEWERS:

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

Council Action: Approved __ Denied __ Deferred __ Other _____

CITY OF BONITA SPRINGS
ZONING RESOLUTION NO. 22 –

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A SPECIAL EXCEPTION REQUEST TO ALLOW OUTDOOR CONSUMPTION ON PREMISES, ASSOCIATED WITH A RESTAURANT, GROUP III USE; LOCATED AT 3601 & 3621 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135.

WHEREAS, the 3601 Bonita Beach Road, LLC is the owner of record for the subject parcels; and

WHEREAS, the Applicant is seeking a special exception request to allow outdoor consumption on premises associated with a Restaurant, Group III use pursuant to Section 4-1023 of the City's land development code ("LDC"); and

WHEREAS, a Public Hearing was advertised and heard on February 8, 2022 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") on Case SPE20-75174-BOS who unanimously recommended approval after giving full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all parties; and

WHEREAS, City Council at their March 2, 2021, zoning meeting considered the record of the Zoning Board on Case SPE20-75174-BOS, as well as a transcript of the Zoning Board hearing submitted as part of the City Council hearing record, and gave full consideration of the Staff Recommendation, the evidence and testimony, including the expert opinion of the Applicant.

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

SECTION ONE: APPROVAL OF REQUEST

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

Conditions:

1. This 4-COP approval is for outdoor consumption on premises in the seating area shown on the site plan (Exhibit A). No consumption is permitted outside of this area.

2. The permitted hours of operation and hours for consumption on premises are limited to:
 - a. Monday- Thursday: 11:00 AM- 9:00 PM
 - b. Friday: 11:00 AM- 10:00 PM
 - c. Saturday: 9:30 AM- 10:00 PM
 - d. Sunday: 9:30 AM- 9:00 PM
3. Any expansion beyond what is shown on the site plan will require additional public hearing approvals and/or infrastructure upgrades, including (but not limited to) additional restroom facilities, parking and additional site improvements.
4. Live entertainment is limited to a soloist only. All speakers shall be directed away from the residential properties. Hours of live entertainment are limited to:
 - a. Monday-Thursday: 6:00 PM- 8:45 PM
 - b. Friday: 6:00 PM-9:45 PM
 - c. Saturday: 10:00 AM- 3:00 PM, 6:00 PM- 9:45 PM
 - d. Sunday: 10:00 AM- 3:00 PM
5. The sale and service of alcoholic beverages will be in conjunction with the Restaurant, Group III use. A request for outdoor consumption for any other use requires separate approvals.
6. The kitchen shall stay open during all hours of consumption and operation.
7. The lights closest to the single-family residences shall have shields to prevent glare.
8. The Bonita Springs Noise Control Ordinance remains in full force and effect.

Findings and Conclusions:

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

1. The Applicant has proven entitlement for the requested special exception by demonstrating compliance with the Bonita Springs Comprehensive Plan; and
2. The Applicant has specifically proven:



**City of Bonita Springs
Land Use Hearings & Adjustments and Zoning Board of Appeals
MINUTES
Tuesday, February 8, 2022
9:00 A.M.**

I. CALL TO ORDER

Chairman Anthony Rascio called the meeting to order at 9:00 A.M.

II. INVOCATION

Board Member Russ Winn furnished the invocation.

III. PLEDGE OF ALLEGIANCE

Board Member Linda Waterhouse led in the Pledge of Allegiance.

IV. ROLL CALL

Chairman Rascio and all Board Members were in attendance.

V. APPROVAL OF MINUTES: December 14, 2021 and January 11, 2022

Board Member Gary Gambrell motioned to approve the December 14, 2021 meeting minutes, which was seconded by Board Member Linda Waterhouse. Motion passed unanimously.

Board Member Linda Waterhouse motioned to approve the minutes from the January 11, 2022 meeting minutes, which was seconded by Chairman Rascio. Motion passed unanimously.

VI. APPOINTMENT OF VICE-CHAIR

Chairman Rascio made a motion to appoint Ben Hershenson as Vice Chair, Seconded by Linda Waterhouse. Approved 7-0

VII. PUBLIC COMMENT

None.

VIII. PUBLIC HEARINGS**A. CASE NAME: BONITA DINER SPECIAL EXCEPTION (SPE20-75174-BOS)**

A SPECIAL EXCEPTION REQUEST AT 3601 & 3621 BONITA BEACH ROAD, TO ALLOW OUTDOOR CONSUMPTION ON PREMISES, ASSOCIATED WITH A RESTAURANT, GROUP III USE.

City Attorney Derek Rooney placed all witnesses under oath.

Mary Zizzo, Community Development, introduced the request stating they are solely analyzing the outdoor consumption since the restaurant use is permitted by right.

Wayne Arnold, AICP with Q. Grady Minor, representing the Applicant, introduced the team and furnished a presentation of the outdoor dining concept with a courtyard that is buffered by a wall on the residential side.

In response to a question from Chairman Rascio, Mr. Arnold advised that the distance between the restaurant and the nearest residence is 260 ft.

In response to a noise concern from Chairman Rascio, Skip Fox, President of Smith Organics, stated that the exhaust fans are extremely quiet with no exhaust noise.

Board Member Gary Gambrell clarified the land uses surrounding the subject property.

Board Member Hershenson asked whether there were any concerns or contact from the church. Mr. Arnold stated they have not heard anything from the church.

In response to Board Member Bruce Galloway, Mr. Michael Herrera, P.E., addressed drainage.

Chairman Rascio and Member Hershenson stated a concern regarding noise, especially with the live music and amplified sound.

PUBLIC COMMENT

- Paul Cartwright, owner of Westgate Center, spoke of concern regarding the possibility of future violations and referred to alleged violations at the Applicant's Downtown Naples location, Lake Park Diner.

Mary Zizzo furnished staff's presentation and stated the following conditions: limited hours of operation; limited music hours for a solo artist only; the kitchen to remain open at all times to prevent the restaurant from becoming a bar. She stated that the Applicant has agreed to comply with the conditions from staff and any changes would require approval.

Mr. Arnold answered questions of the Board and also stated the applicant agrees with the conditions as presented by staff.

Chairman Rascio asked if Mr. Arnold knew why the City of Naples turned down their request for outdoor music. Mr. Arnold stated he did not know the reason, nor did Skip Fox.

MOTION:	Motion to approve request to allow outdoor consumption, as conditioned
RESULT:	7-0
MOTION BY:	Ben Hershenson
SECOND BY:	Gary Gambrell
OPPOSED:	none

IX. **NEXT MEETING:** March 15, 2022 at 9:00 A.M. (tentative)

X. **ADJOURNMENT**

There being no further items to discuss, meeting adjourned at 9:51 a.m.

Respectfully submitted,

Teresa Cannon, Recording Secretary

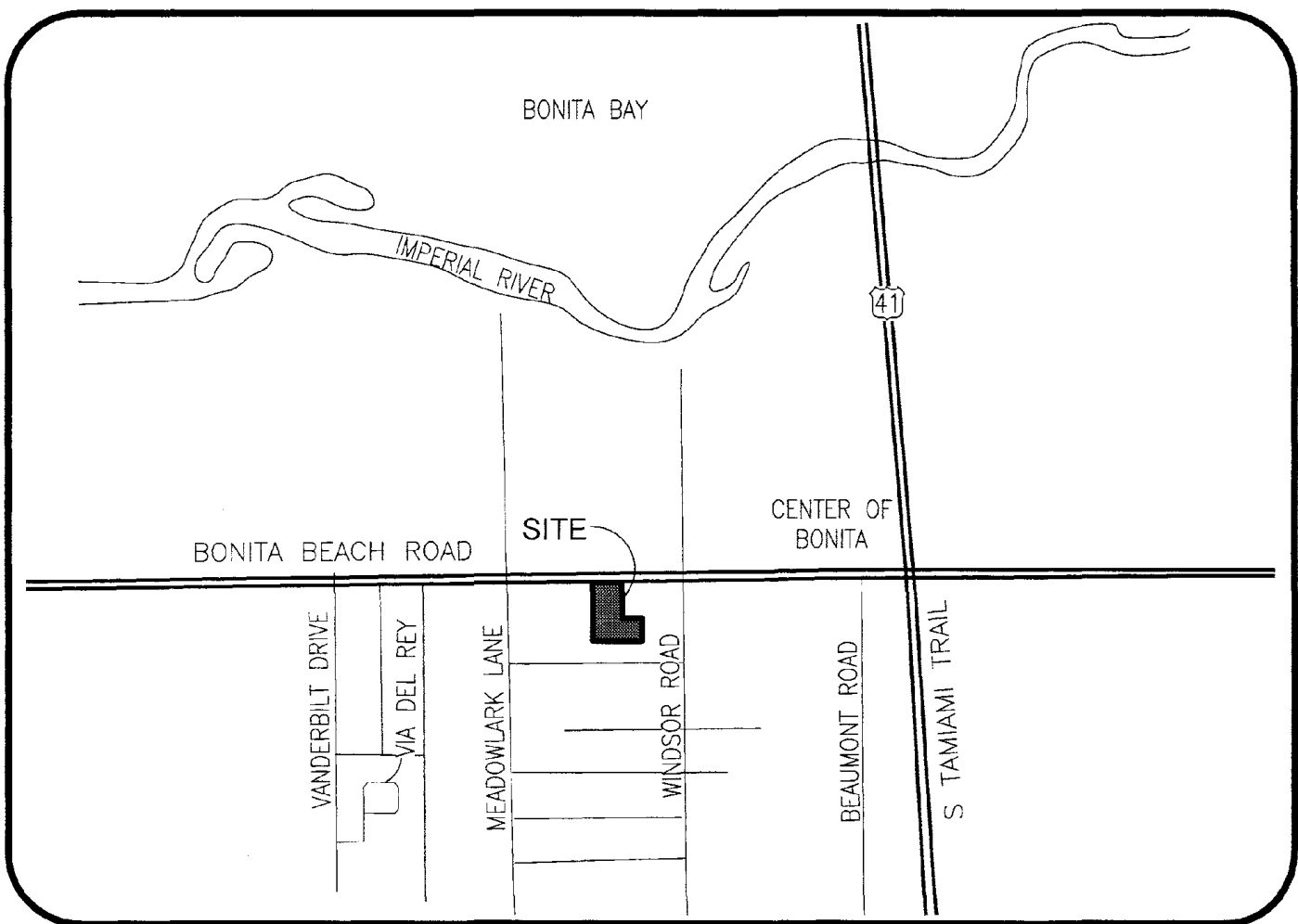
Approved by the Land Use Hearings & Adjustments and Zoning Board of Appeals on the ____ day of _____, 2022.

Anthony Rascio, Chairman

LEGEND

- POC POINT OF COMMENCEMENT
POB POINT OF BEGINNING
FIP FOUND IRON PIPE
FIR FOUND 5/8" IRON ROD
SIR SET 5/8" IRON ROD w/CAP, L.B. #5151
FCM FOUND CONCRETE MONUMENT
SCM SET CONC. MONUMENT w/ALUMINUM DISK, L.B. #5151
FPK FOUND PARKER KALON NAIL
SPK SET PARKER KALON NAIL w/ALUMINUM DISK, L.B. # 5151
FDH FOUND DRILL HOLE
SDH SET DRILL HOLE
FMN FOUND MAG NAIL
FND FOUND
(P) PLAT
(M) MEASURED
(C) CALCULATED
(D) DEED
PB PLAT BOOK
OR OFFICIAL RECORDS BOOK
PG PAGE(S)
PSM PROFESSIONAL SURVEYOR AND MAPPER
LB LICENSED BUSINESS
SPC STATE PLANE COORDINATES
ROW RIGHT-OF-WAY
PUE PUBLIC UTILITY EASEMENT
CUE COUNTY UTILITY EASEMENT
UE UTILITY EASEMENT
AE ACCESS EASEMENT
DE DRAINAGE EASEMENT
LME LAKE MAINTENANCE EASEMENT
JBE LANDSCAPE BUFFER EASEMENT
IRE IRRIGATION EASEMENT
FPL FLORIDA POWER AND LIGHT
BSUE BONITA SPRINGS UTILITY EASEMENT
NAVD NORTH AMERICAN VERTICAL DATUM OF 1988
NGVD NATIONAL GEODETIC VERTICAL DATUM OF 1929
ELEV ELEVATION
INV INVERT ELEVATION
RIM RIM ELEVATION
A/C AIR CONDITIONING UNIT/PAID
CONC CONCRETE
CMP CORRUGATED METAL PIPE
CPP CORRUGATED PLASTIC PIPE
RCP REINFORCED CONCRETE PIPE
CHW CONCRETE HEADWALL
TOB TOP OF BANK
TOS TOE OF SLOPE
EOW EDGE OF WATER
CL CENTER LINE
EOP EDGE OF PAVEMENT
BOL BOLLARD
GTS GREASE TRAP
SM SANITARY MANHOLE
CO CLEAN OUT
SV SEWER VALVE
CB CATCH BASIN
DM DRAINAGE MANHOLE
MES MITERED END
YD YARD DRAIN
WV WATER VALVE
WM WATER METER
BFP BACK FLOW PREVENTOR
FH FIRE HYDRANT
FDC FIRE DEPARTMENT CONNECTION
BP BACTERIA SAMPLE POINT
ARV AIR RELEASE VALVE
IRV IRRIGATION VALVE/ CONTROL VALVE
GV GAS VALVE
GSM GAS METER/SERVICE
GMM GAS METER
UT UTILITY POLE - WOOD
UC UTILITY POLE - CONCRETE
CA CUY ANCHOR
OH OVERHEAD WIRES
LP LIGHT POLE
TM TELEPHONE MANHOLE
TRS TELEPHONE RISER/BOX
TVR CABLE TELEVISION RISER/BOX
EM ELECTRIC MANHOLE
ERIS ELECTRIC RISER/BOX/METER
ETR ELECTRIC TRANSFORMER
TL TRAFFIC LIGHT
UG UNDERGROUND UTILITY MARKER
SOP SIGN ON POLE
OT OAK TREE
PT PALM TREE
PN PINE TREE
PT 2" POLY TUBE STUB OUT
CCR CERTIFIED CORNER RECORD

— FZ — FZ — FZ — FZ —
APPROXIMATE FLOOD ZONE LINE



VICINITY MAP
NOT TO SCALE

EXCEPTIONS FROM COVERAGE

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH POLICY NUMBER OF6-8812873, AND A POLICY DATE OF OCTOBER 24, 2020 AT 7:50 AM. WITH AN ENDORSEMENT REMOVING EXCEPTIONS 4, 5, 10 & 11, DATED OCTOBER 29, 2020.

EXCEPTIONS 1, 7, 9, & 13 NOTHING TO SHOW

EXCEPTIONS 2-6, 10, & 11 REMOVED

EXCEPTION 8 GRANT OF EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 3392, PAGE 3638, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (AFFECTS THE SUBJECT PARCEL, SHOWN HEREON)

EXCEPTION 12 LEE COUNTY ORDINANCE NO. 86-14 RECORDED NOVEMBER 30, 1990 IN OR BOOK 2189, PAGE 3281; AND AMENDED BY ORDINANCE NO. 86-38 IN OR BOOK 2189, PAGE 3334, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (BLANKET IN NATURE, NOT SHOWN HEREON)

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED UTILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AS BEING S 89°06'44" W.

2. THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE COMMITMENT ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH POLICY NUMBER OF6-8812873, AND A POLICY DATE OF OCTOBER 24, 2020 AT 7:50 AM. WITH AN ENDORSEMENT REMOVING EXCEPTIONS 4, 5, 10 & 11, DATED OCTOBER 29, 2020 MAY BE SUBJECT TO EASEMENTS, RESERVATIONS AND/OR RESTRICTIONS OF RECORD. ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

3. ELEVATIONS SHOWN HEREON ARE IN FEET AND ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988. ELEVATIONS WERE DERIVED BY DIFFERENTIAL LEVELING FROM NGS BENCHMARK T 718, HAVING A PUBLISHED ELEVATION OF 11.27 FEET

4. THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE AE, HAVING A BASE FLOOD ELEVATION OF 10.0' AND FLOOD ZONE X HAVING NO BASE FLOOD ELEVATION PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 12071C 0658 F, DATED 8/28/2008. AND FLOOD ZONE X HAVING NO BASE FLOOD ELEVATION PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 12071C 0654 F, DATED 8/28/2008. FLOOD LINES SHOWN HEREON WERE OBTAINED FROM A LEE COUNTY GIS FILE AND ARE ASSUMED TO BE APPROXIMATE.

5. CERTAIN FEATURES REPRESENTED BY SYMBOLS MAY NOT BE SHOWN AT THEIR TRUE LOCATION AND/OR SCALE IN ORDER TO BE ABLE TO DEPICT THEM ON THIS MAP.

6. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.

7. THIS SURVEY DOES NOT ADDRESS ANY ENVIRONMENTAL CONCERNS, ENDANGERED WILDLIFE OR JURISDICTIONAL WETLANDS, IF ANY, EXCEPT AS SHOWN ON THIS SURVEY.

8. THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.

9. THIS SURVEY IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SURVEY MAP ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.

10. UNLESS OTHERWISE NOTED, BELOW GROUND UTILITIES AND FOUNDATIONS WERE NOT LOCATED FOR THE PURPOSES OF THIS SURVEY.

11. BY SIGNING BELOW I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.051, F.A.C., PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

12. OWNERSHIP AND ADDRESS INFORMATION SHOWN HEREON WAS TAKEN FROM THE LEE COUNTY PROPERTY APPRAISER WEBSITE AT THE TIME OF THIS SURVEY.

PROPERTY DESCRIPTION

(PER THE PROVIDED TITLE COMMITMENT)
THE SOUTH 188 FEET OF THE NORTH 455 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4, LESS THE SOUTH 38.00 FEET OF THE EAST 130.00 FEET OF THE NORTH 305.00 FEET,

TOGETHER WITH THE EAST 120 FEET OF THE WEST 200 FEET OF THE NORTH 220 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4,

TOGETHER WITH THE SOUTH 47 FEET OF THE NORTH 267 FEET OF THE WEST 200 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 ALL OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA.

SUBJECT TO STATE ROAD RIGHT-OF-WAY FOR STATE ROAD S-865. ALSO BEING DESCRIBED AS THE FOLLOWING:

A PARCEL OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 4 THENCE (BEARINGS CITED HEREIN ARE IN THE MERIDIAN ASSUMING THE NORTH LINE OF SAID NORTHWEST QUARTER AS BEARING SOUTH 89°57'00" WEST, AND ALL OTHER BEARINGS ARE RELATIVE THERETO) SOUTH 89°57'00" WEST, ALONG THE SAID NORTH LINE, A DISTANCE OF 460.75 FEET; THENCE SOUTH 00°13'22" WEST, A DISTANCE OF 67.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF BONITA BEACH ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°13'22" WEST, A DISTANCE OF 238.00 FEET; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 130.19 FEET; THENCE SOUTH 00°12'50" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 89°57'00" WEST, A DISTANCE OF 330.54 FEET; THENCE NORTH 00°14'10" EAST, A DISTANCE OF 235.00 FEET; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 80.10 FEET; THENCE NORTH 00°13'47" EAST, A DISTANCE OF 153.00 FEET TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 120.15 FEET MORE OR LESS TO THE POINT OF BEGINNING.

AND

THE WEST 80 FEET OF THE NORTH 220 FEET OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA. SUBJECT TO STATE ROAD RIGHT-OF-WAY FOR STATE ROAD S-865.

CONTAINING 2.23 ACRES, MORE OR LESS.

CERTIFIED TO:

3601 BONITA BEACH, LLC
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
FORSYTH & BRIDGER, P. A.
FINEMARK NATIONAL BANK & TRUST
MIDWEST ONE BANK

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, AND 5, OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON 10/01/21 FOR THE FENCE LOCATION AND 2/12/20 FOR ALL OTHER IMPROVEMENTS.

Donald L. Saintenoy III
DONALD L. SAINTENOY III
P.S.M. #6761, FOR THE FIRM

11/2/21
DATE

REVISION: REMOVED EXCEPTION LABEL CARRIED OVER FROM PRIOR TITLE DOCUMENTS 11-1-2021.
REVISION: REVISED PER NEW TITLE DOCUMENTS 10-19-2021.
REVISION: ADDED NEW FENCE LOCATION 10-15-2021.
REVISION: ADDED OFFSITE EASEMENT 4-5-2021.
REVISION: REVISE BOUNDARY BEARING LABELS 3-9-2021.
REVISED: ADDED CERTIFICATIONS 10-13-2020



GradyMinor

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

Civil Engineers • Land Surveyors • Planners • Landscape Architects
Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266

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

DRAWN BY:	KJG
CHECKED BY:	DLS
JOB CODE:	NRDBBR
SCALE:	N/A
DATE:	13 AUGUST 2020
FILE:	20-11-ALTA.DWG
SHEET:	1 of 2

ALTA / NSPS LAND TITLE SURVEY

3601 BONITA BEACH RD SW
BONITA SPRINGS, FL 34134

LYING IN
SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

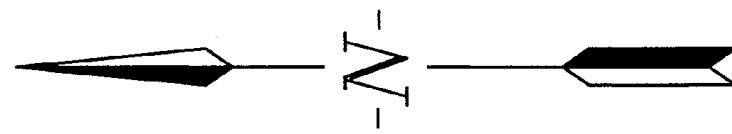
SEAL

NOT COMPLETE WITHOUT
SHEETS 1 AND 2 OF 2

LEGEND

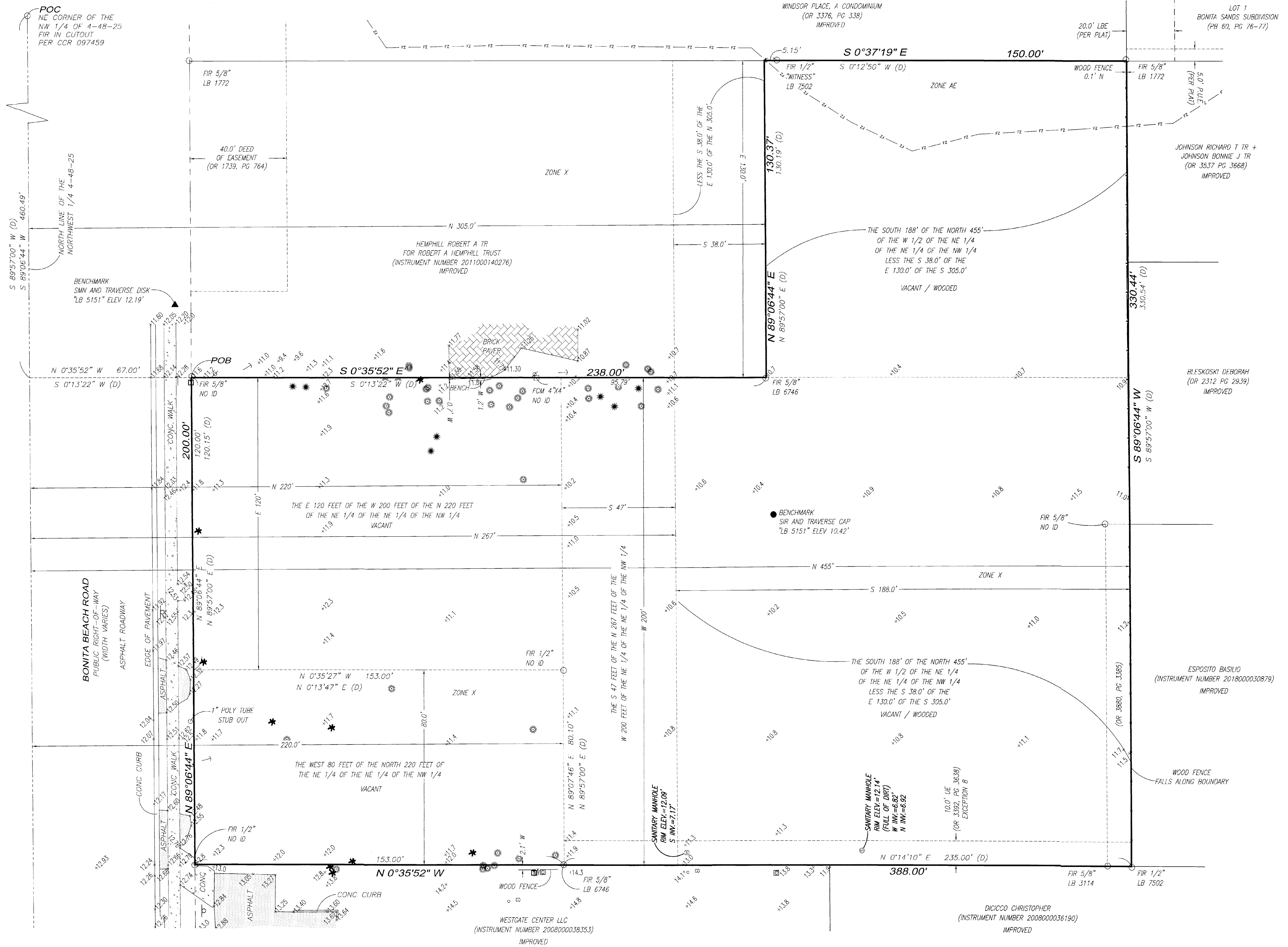
POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING
FIP	FOUND IRON PIPE
FIR	FOUND 5/8" IRON ROD
SIR	SET 5/8" IRON ROD w/CAP, L.B. #5151
FCM	FOUND CONCRETE MONUMENT
SOM	SET CONC. MONUMENT w/ALUMINUM DISK, L.B. #5151
FPK	FOUND PARKER KALON NAIL
SMN	SET MAG NAIL w/ALUMINUM DISK, L.B. #5151
FDH	FOUND DRILL HOLE
SDH	SET DRILL HOLE
FMN	FOUND MAG NAIL
FND	FOUND
(P)	PLAT
(M)	MEASURED
(C)	CALCULATED
(D)	DEED
PS	PLAT BOOK
OR	OFFICIAL RECORDS BOOK
PS	PAGES
PSM	PROFESSIONAL SURVEYOR AND MAPPER
LB	LICENSED BUSINESS
SPC	STATE PLANE COORDINATES
ROW	RIGHT-OF-WAY
PUE	PUBLIC UTILITY EASEMENT
CUE	COUNTY UTILITY EASEMENT
UE	UTILITY EASEMENT
AE	ACCESS EASEMENT
DE	DRAINAGE EASEMENT
LME	LAKE MAINTENANCE EASEMENT
LBE	LANDSCAPE BUFFER EASEMENT
IRRE	IRRIGATION EASEMENT
FPL	FLORIDA POWER AND LIGHT
BSUE	BONITA SPRINGS UTILITY EASEMENT
NAVD	NORTH AMERICAN VERTICAL DATUM OF 1988
NOVD	NATIONAL GEODETIC VERTICAL DATUM OF 1929
ELEV	ELEVATION
INV	INVERT ELEVATION
RM	RM ELEVATION
A/C	AIR CONDITIONING UNIT/PAD
CONC	CONCRETE
OMP	CORRUGATED METAL PIPE
OPP	CORRUGATED PLASTIC PIPE
ROP	REINFORCED CONCRETE PIPE
CHW	CONCRETE HEADWALL
TOS	TOP OF BANK
TOS	TOE OF SLOPE
EDW	EDGE OF WATER
EL	CENTER LINE
EDP	EDGE OF PAVEMENT
BOL	BOLLARD
OT	ORIGASE TRAP
CO	SANITARY MANHOLE
SV	CLEAN OUT
SV	SEWER VALVE
MES	CATCH BASIN
WV	DRAINAGE MANHOLE
WV	MITERED END
WV	YARD DRAIN
WV	WATER VALVE
WV	WATER METER
WV	BACK FLOW PREVENTOR
WV	FIRE HYDRANT
WV	FIRE DEPARTMENT CONNECTION
WV	BACTERIA SAMPLE POINT
WV	AIR RELEASE VALVE
WV	IRRIGATION VALVE/CONTROL VALVE
WV	GAS VALVE
WV	GAS METER/SERVICE
WV	GAS MARKER
WV	UTILITY POLE - WOOD
WV	UTILITY POLE - CONCRETE
WV	GUY ANCHOR
WV	OVERHEAD WIRES
WV	LIGHT POLE
WV	TELEPHONE MANHOLE
WV	TELEPHONE RISER/BOX
WV	CABLE TELEVISION RISER/BOX
WV	ELECTRIC MANHOLE
WV	ELECTRIC RISER/BOX/METER
WV	ELECTRIC TRANSFORMER
WV	TRAFFIC LIGHT
WV	UNDERGROUND UTILITY MARKER
WV	SIGN ON POLE
WV	OAK TREE
WV	PALM TREE
WV	PINE TREE
WV	1" POLY TUBE STUB OUT
WV	UNKNOWN TREE
CCR	CERTIFIED CORNER RECORD

APPROXIMATE FLOOD ZONE LINE



SCALE: 1" = 20'

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



GradyMinor

Civil Engineers • Land Surveyors • Planners • Landscape Architects
 Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 260000266
 Bonita Springs: 239.947.1144 www.GradyMinor.com Fort Myers: 239.690.4380

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

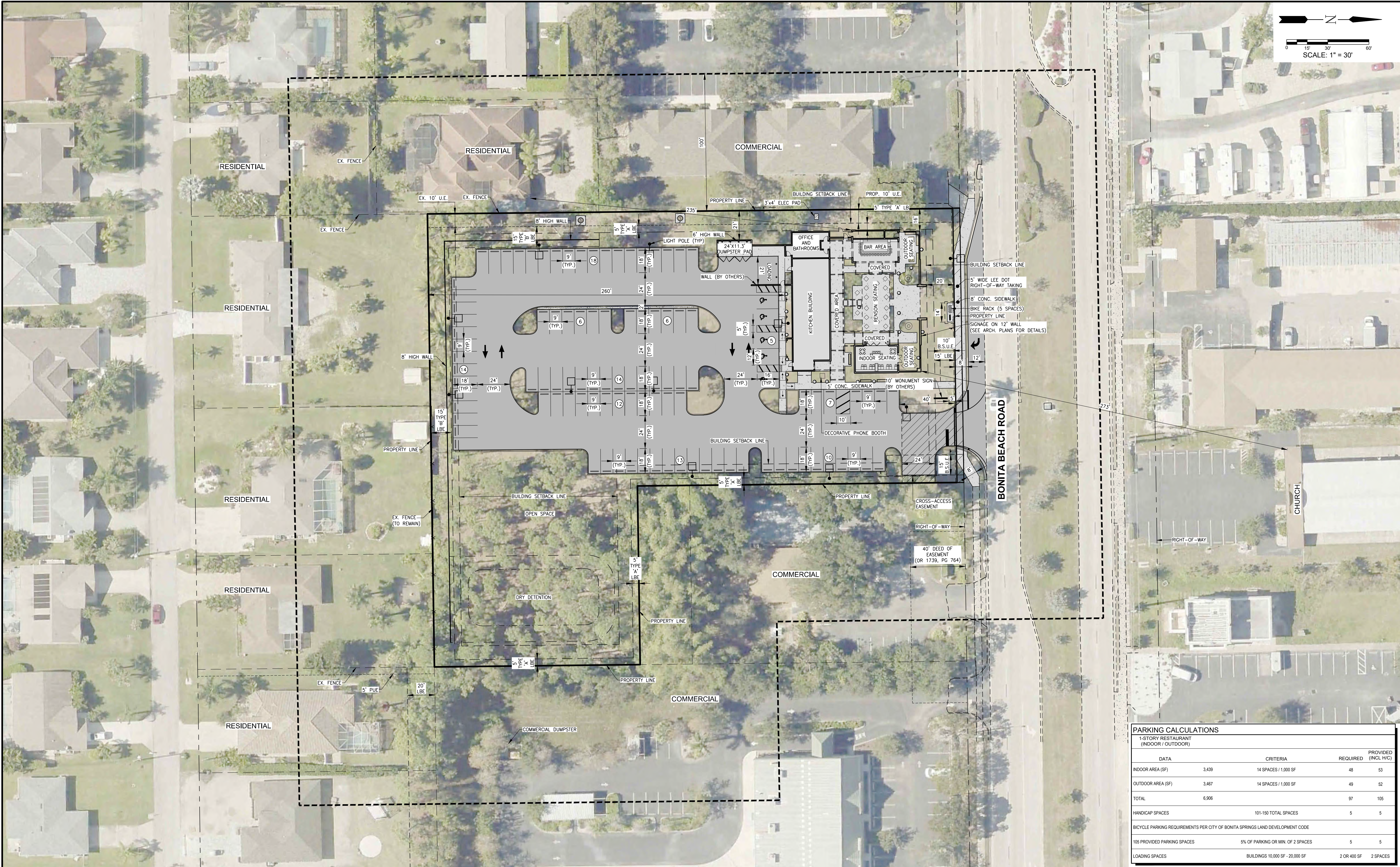
DRAWN BY:	KJG
CHECKED BY:	DLS
JOB CODE:	NRDBBR
SCALE:	1" = 20'
DATE:	13 AUGUST 2020
FILE:	20-11-ALTA.DWG
SHEET:	2 of 2

ALTA / NSPS LAND TITLE SURVEY

3601 BONITA BEACH RD SW
 BONITA SPRINGS, FL 34134

LYING IN
 SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST
 LEE COUNTY, FLORIDA

NOT COMPLETE WITHOUT
 SHEETS 1 AND 2 OF 2



PARKING CALCULATIONS				
1-STORY RESTAURANT (INDOOR / OUTDOOR)				
DATA		CRITERIA	REQUIRED	PROVIDED (INCL. H/C)
INDOOR AREA (SF)	3,439	14 SPACES / 1,000 SF	48	53
OUTDOOR AREA (SF)	3,467	14 SPACES / 1,000 SF	49	52
TOTAL	6,906		97	105
HANDICAP SPACES		101-150 TOTAL SPACES	5	5
BICYCLE PARKING REQUIREMENTS PER CITY OF BONITA SPRINGS LAND DEVELOPMENT CODE				
105 PROVIDED PARKING SPACES		5% OF PARKING OR MIN. OF 2 SPACES	5	5
LOADING SPACES		BUILDINGS 10,000 SF - 20,000 SF	2 OR 400 SF	2 SPACES

CROSS-ACCESS EASEMENT

LEE COUNTY RIGHT-OF-WAY TAKING

LEGEND

Revision	Date	Description

DESIGNED BY: J.D.

DRAWN BY: S.T./K.L.M.

APPROVED: M.T.H.

JOB CODE: NROBBR

SCALE: 1" = 30'

GradyMinor

Civil Engineers • Land Surveyors • Planners • Landscape Architects

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

Bonita Springs: 239.947.1144 Fort Myers: 239.690.4380

www.GradyMinor.com

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

BONITA BEACH DINER SPECIAL EXCEPTION

EXHIBIT IV.G
CONCEPTUAL SITE PLAN

MUNICIPALITY:
CITY OF BONITA SPRINGS
SEC./TOWNSHIP/RNG
04/48S/25E

DATE:
OCTOBER 2020

SUBMITTAL TYPE:
SPECIAL EXCEPTION

SHEET 1 OF 1

6:\ENGINEERING\PROJ-ENG\N\NROBBR\CIVIL\DWG\EXHIBITS\EXHIBIT IV.G (REVISED 09.27.21) DWG 9/28/2021 1:40 PM

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

PROJECT NAME: BONITA DINER SPECIAL EXCEPTION

TYPE OF CASE: CONSUMPTION ON PREMISES SPECIAL EXCEPTION

CASE NUMBER: SPE20-75174-BOS

HEARING DATE: FEBRUARY 8, 2022

PLANNERS: MARY ZIZZO, ESQ., AICP

REQUEST AND STAFF RECOMMENDATION

A special exception request at 3601 and 3621 Bonita Beach Road, to allow outdoor consumption on premises, associated with a Restaurant, Group III use.

Deviations Requested: None

Staff recommends **approval** of the request, **subject to conditions** outlined in this Staff Report.

I. APPLICATION SUMMARY:

A. Owner and Applicant: 3601 Bonita Beach Road, LLC

B. Agent: D. Wayne Arnold, AICP, Q. Grady Minor & Associates, P.A.

C. Request: A special exception request for outdoor consumption on premises, associated with a Restaurant, Group III use.

D. Location: 3601 and 3621 Bonita Beach Road, Bonita Springs, FL 34134

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

Future Land Use: General Commercial

Current Zoning: Commercial Planned Development (CPD)- Expired MCP
Bonita Beach Road Corridor- Commercial Zone

Current Use: Vacant

F. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<u>Future Land Use Map</u>
North: Bonita Beach Road Right-of-Way, Bonita Beach Road Corridor Commercial Zone- Place of Worship, Retail, Professional Offices.	General Commercial
East: Commercial Planned Development (CPD), Bonita Beach Road Corridor Commercial Zone- Bonita Executive Suites. Allows for offices, personal and business services, retail and restaurants.	General Commercial
South: Residential (RS-1 & TFC-2), Single Family Residences.	Moderate Density Residential
West: Bonita Beach Road Corridor Commercial Zone- Westgate Center Professional Offices.	General Commercial

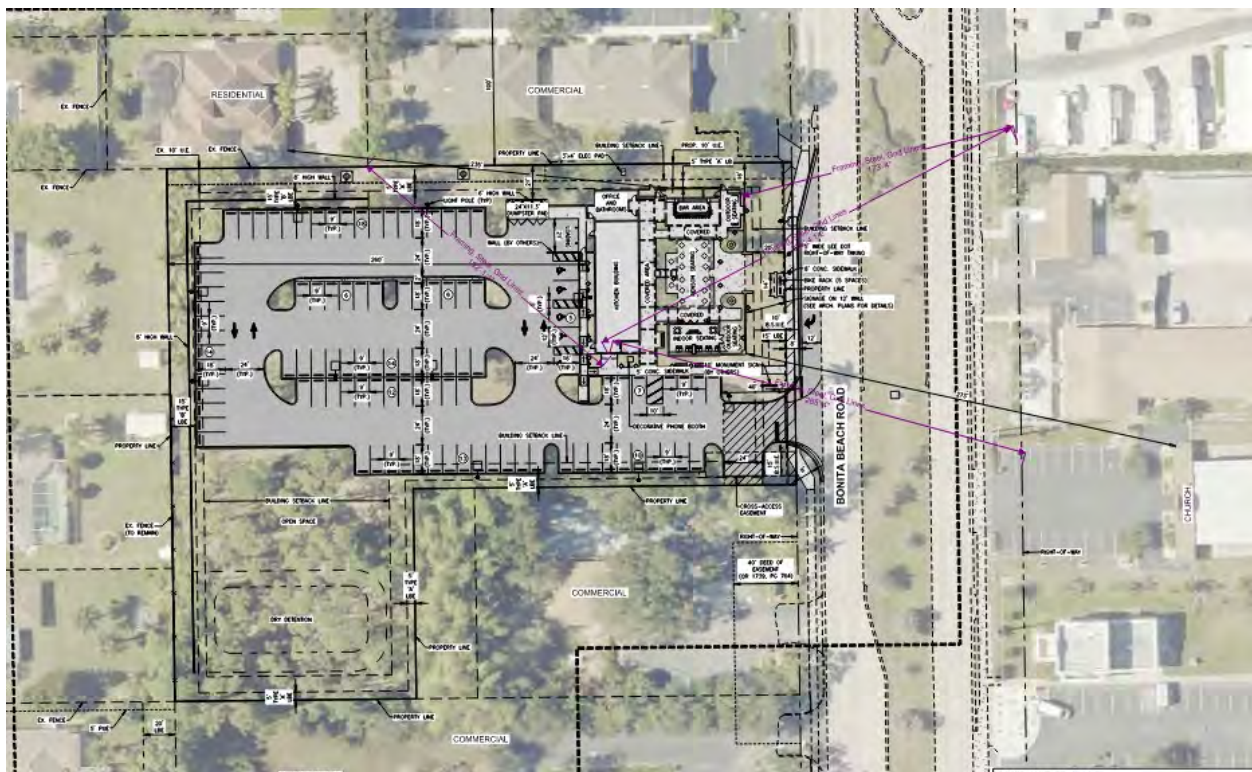
II. **BACKGROUND AND INFORMATIONAL ANALYSIS**

Introduction/Synopsis

The Applicant has submitted a special exception request for outdoor consumption on premises for beer, wine and liquor (4-COP), associated with a Restaurant, Group III use. The site is located in the Commercial Zone of the Bonita Beach Road Corridor Overlay and within a Commercial Planned Development with an expired Master Concept Plan. The site is currently vacant. The Applicant proposes to construct a restaurant, Group III, with an outdoor dining component with outdoor consumption on premises. LDC Section 4-408(c)(40) classifies Group III restaurants as “*Standard Restaurants*. Establishments wherein customers usually arrive via automobile and are seated within the establishment, including ‘fast food establishments.’ Service may be provided or may be by self-service.” The restaurant operation is proposed to be an order and sit-down restaurant to hold minimum 150 patrons. The restaurant use is permitted by right in the Commercial Zone of the Bonita Beach Road Corridor Overlay.

Pursuant to Land Development Code Section 4-1023(a)(2), a request for outdoor consumption on premises for a Group III restaurant use within 500 feet of a religious facility, noncommercial school, child day care center, park or dwelling unit under separate ownership, requires a special exception. Distance is measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the school, child day care center, dwelling unit or park. This site

The Applicant held their two required neighborhood meetings. After the first meeting, many public comments were received, which were included in your packet. It is Staff's opinion that the comments have been addressed by the Applicant. The second neighborhood meeting held by the Applicant on January 6, 2022. The meeting had 6 members of the public present. While concerns of noise and buffers were addressed, the Applicant appeared to quash the concerns of the public. Since this meeting, one letter of support and a few letters of opposition have been received. Those letters are included with this Report.



Source: Applicant with Staff Additions

The subject properties are located in the Commercial Zone of the Bonita Beach Road Corridor Overlay. The intent of the Corridor District is to guide future growth and redevelopment along the Bonita Beach Road Corridor within zones, quadrants, and nodes as identified in the Bonita Plan, Bonita Beach Road Visioning Study and Bonita Beach Road Land Use Report. The Bonita Beach Road Corridor District is intended to support urbanized development patterns that focus on human-scale development, an appropriate mixture of land uses, site design, interconnectivity, mobility, architectural standards, and a vibrant and aesthetically pleasing streetscape. Restaurants, Group III are permitted by right in the Overlay.

As previously mentioned, the site's Master Concept Plan for the Commercial Planned Development is expired. The intent of the Bonita Beach Road Corridor Overlay is for it to apply to all future development so existing planned developments may voluntarily comply with the standards therein, without needing to amend their corresponding planned development.

The site is proposed to be developed pursuant to the Commercial Zone of the Bonita Beach Road Corridor Overlay development standards, providing sufficient parking for the site, meeting required setbacks, and providing a cross-access easement to the South property to provide future interconnection.

Staff finds this request compatible with the zoning of the site.

Neighborhood Compatibility

Surrounded by commercial uses within a major corridor of Bonita Springs, this site is compatible with the uses around it. Restaurants are a permitted use within the zoning district and contribute to the overlay intents the site is located within. The restaurant use can serve the residents of Bonita Springs and those that work or visit in the area.

The proposed use is also cognizant of the nearby residential dwelling units and places of worship. The footprint of the proposed outdoor area has reduced in size and proximity to residences since the initial submittal. Further, a stage was initially requested in this application, which has since been removed from the request. As conditioned, the restaurant hours of operation are similar to many family restaurants and must comply with the Bonita Springs Noise Ordinance. Further, the site is designed to have a landscaped eight (8) foot high wall adjacent to the parking lot to provide protection from headlight glare and to provide an aesthetic view for the adjacent residential properties, preventing wandering patrons and providing a sense of place. The Southeast portion of the site will accommodate the storm water drainage on-site.

While much of the seating is outdoor, the architectural plans included can better provide a visual of the sound proofing measures taken to encapsulate the restaurant inside of the 12' high minimum wall courtyard or surrounded by enclosed building area. The Applicant has worked diligently with Staff based on concerns of the nearby properties.

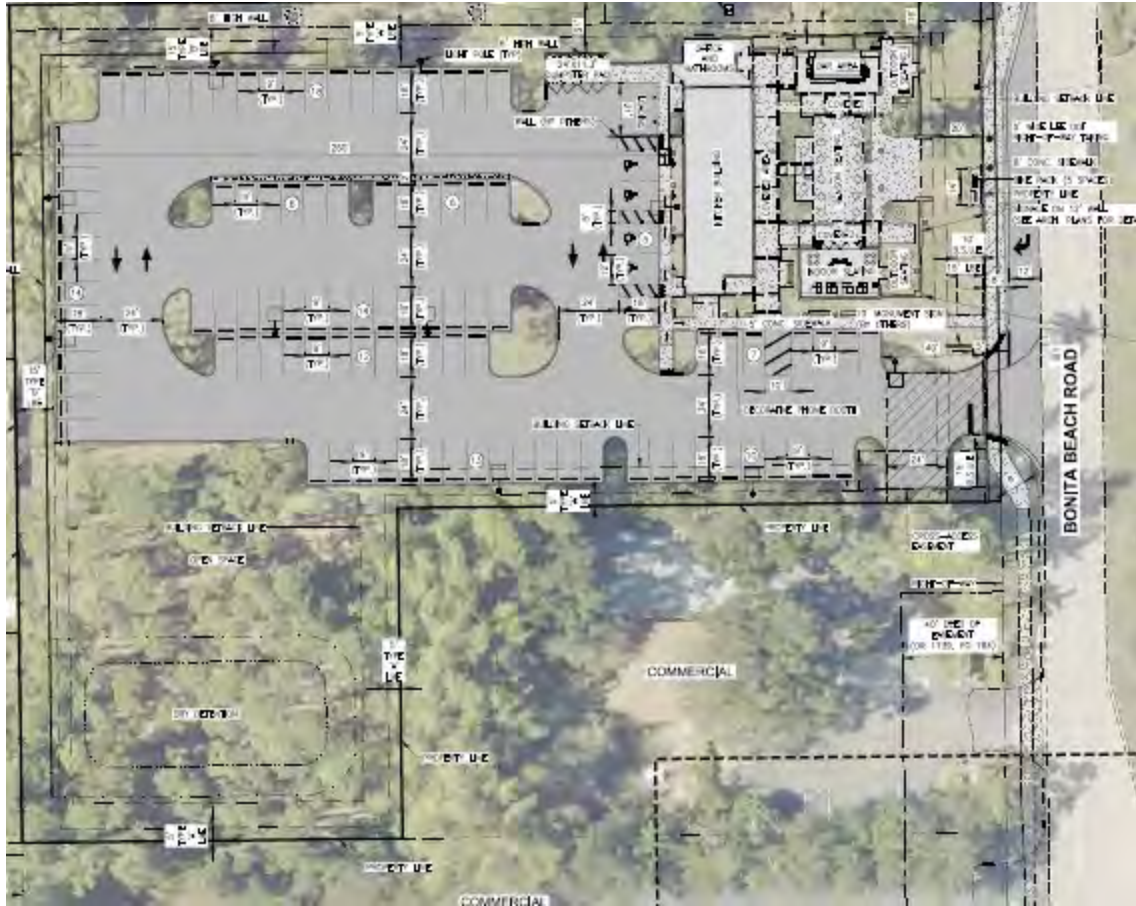


Figure 2: Site Plan

Source: Applicant



Figure 3: West Elevation Facing Commercial and Residential

Source: Applicant



Figure 4: North Elevation Facing Bonita Beach Road

Source: Applicant

Comprehensive Plan Considerations

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

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

- a. Appropriate uses include a wide range of commercial retail and service uses for residents and visitors; hotels/motels; offices; light industrial uses; schools; recreation; public and semi-public uses; multi-family uses up to 10 units per acre; and mixed residential and commercial use in planned developments.*
- b. If affordable housing is provided, residential density may be increased by up to five additional units per acre.*
- c. Maximum allowable height of structures shall be 75 feet from the base flood elevation to the eaves except that no new structures or modification of existing structures located on the islands west of the mainland may be constructed in excess of 35 feet in height.*
- d. Nonresidential uses shall be limited to a maximum floor area ratio (FAR) of 1.2.*

Policy 1.1.22: In order to minimize incompatibility when commercial, industrial or more intensive land uses share a common boundary with residential land uses, lower intensity uses shall be located adjacent to residential uses and the Land Development Code shall include provisions for buffering in the form of fences, walls, vegetation, or spatial buffers to minimize the impacts upon the residential use.

A restaurant use with outdoor consumption on premises is in conformance with the City's Future Land Use Element of the Comprehensive Plan.

Findings & Conclusions:

Based upon an analysis of the application and the standards for approval of a special exception, Staff makes the following findings and conclusions, as conditioned:

The requested special exception, as conditioned:

- a) is due to a changed or changing condition that makes approval of the request appropriate;
The Applicant states that COVID-19 has required an increase in outdoor seating for restaurants and this location would not have an outdoor seating capability without this request. It can further be stated that outdoor seating is increasingly desired year-round as the population increases. The City continues to see requests for outdoor consumption on premises as residents and visitors continue to come down desiring to enjoy the outdoor experiences and Southwest Florida climate.
- b) is consistent with the Goals, Objectives, Policies, and intent set forth in the City's Comprehensive Plan;
The General Commercial Future Land Use encourages uses that serve the general population of the City. A restaurant use serves residents and visitors. The proposed footprint of the project is much less than the allowable floor-to-area (FAR) ratio. The site has access to adequate public facilities and services in accordance with Objective 1.11. Transportation Element 1.4 seeks to improve the aesthetic qualities and appearances of roadways, which the architectural plans will be reviewed at time of local development order by our City Architect. The site will be required to provide a pedestrian connection from Bonita Beach Road, which will be landscaped in accordance with Code. Pursuant to Transportation Policy 1.19, a new LeeTran bus stop will be installed in front of the subject sites.
- c) meets or exceeds all performance and locational standards set forth for the proposed use;
The proposed project is located along an arterial roadway (Bonita Beach Road), shown on the City of Bonita Springs Pedestrian Master Plan (PATH), as requiring multimodal facilities. Specifically, this includes a minimum 8' wide sidewalk along the subject site's Bonita Beach Road frontage with a required payment for fee-in-lieu for the remaining infrastructure. The Applicant has already applied for a site permit, which is required to conform with the LDC.
- d) protects, conserves or preserves environmentally critical areas and natural resources;
There are no environmentally critical areas or natural resources on site.
- e) is compatible with existing or planned uses in the surrounding area;
This is in a commercial area serving the general population of the City. The intent is to provide a location for those working or living near the area to visit. Hours outlined in the conditions of approval provide safeguards for the nearby residences to better ensure compliance with the Noise Ordinance.

- f) will not cause damage, hazard, nuisance or other detriment to persons or property; Properties shall not be negatively affected by the request as proposed and conditioned. The Applicant will be subject to the Noise Control Ordinance, landscaping will be installed to provide an aesthetic view and appropriate safeguards will be required to ensure no consumption occurs outside of the proposed seating area.
- g) will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the City's Land Development Code. The request will comply with all Land Development Code requirements at time of local development order. Compliance with the Bonita Beach Road Corridor Overlay is required. All other provisions related to the special exception requirements have been met.

III. RECOMMENDATION:

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

Conditions

1. This 4-COP approval is for outdoor consumption on premises in the seating area shown on the site plan (Exhibit A). No consumption is permitted outside of this area.
2. The permitted hours of operation and hours for consumption on premises are limited to:
 - a. Monday- Thursday: 11:00 AM- 9:00 PM
 - b. Friday: 11:00 AM- 10:00 PM
 - c. Saturday: 9:30 AM- 10:00 PM
 - d. Sunday: 9:30 AM- 9:00 PM
3. Any expansion beyond what is shown on the site plan will require additional public hearing approvals and/or infrastructure upgrades, including (but not limited to) additional restroom facilities, parking and additional site improvements.
4. Live entertainment is limited to a soloist only. All speakers shall be directed away from the residential properties. Hours of live entertainment are limited to:
 - a. Monday-Thursday: 6:00 PM- 8:45 PM
 - b. Friday: 6:00 PM-9:45 PM
 - c. Saturday: 10:00 AM- 3:00 PM, 6:00 PM- 9:45 PM
 - d. Sunday: 10:00 AM- 3:00 PM
5. The sale and service of alcoholic beverages will be in conjunction with the Restaurant, Group III use. A request for outdoor consumption for any other use requires separate approvals.
6. The kitchen shall stay open during all hours of consumption and operation.
7. The lights closest to the single-family residences shall have shields to prevent glare.
8. The Bonita Springs Noise Control Ordinance remains in full force and effect.

IV. SUBJECT PROPERTY

The Applicant indicates the STRAP numbers are:

4-48-25-B1-00016.0010 and 04-48-25-B1-00016.0000

V. ATTACHMENTS

- A. ALTA Survey and Legal Description of the Subject Properties
- B. Post-Sufficiency Neighborhood Meeting Summary
- C. Public Comments

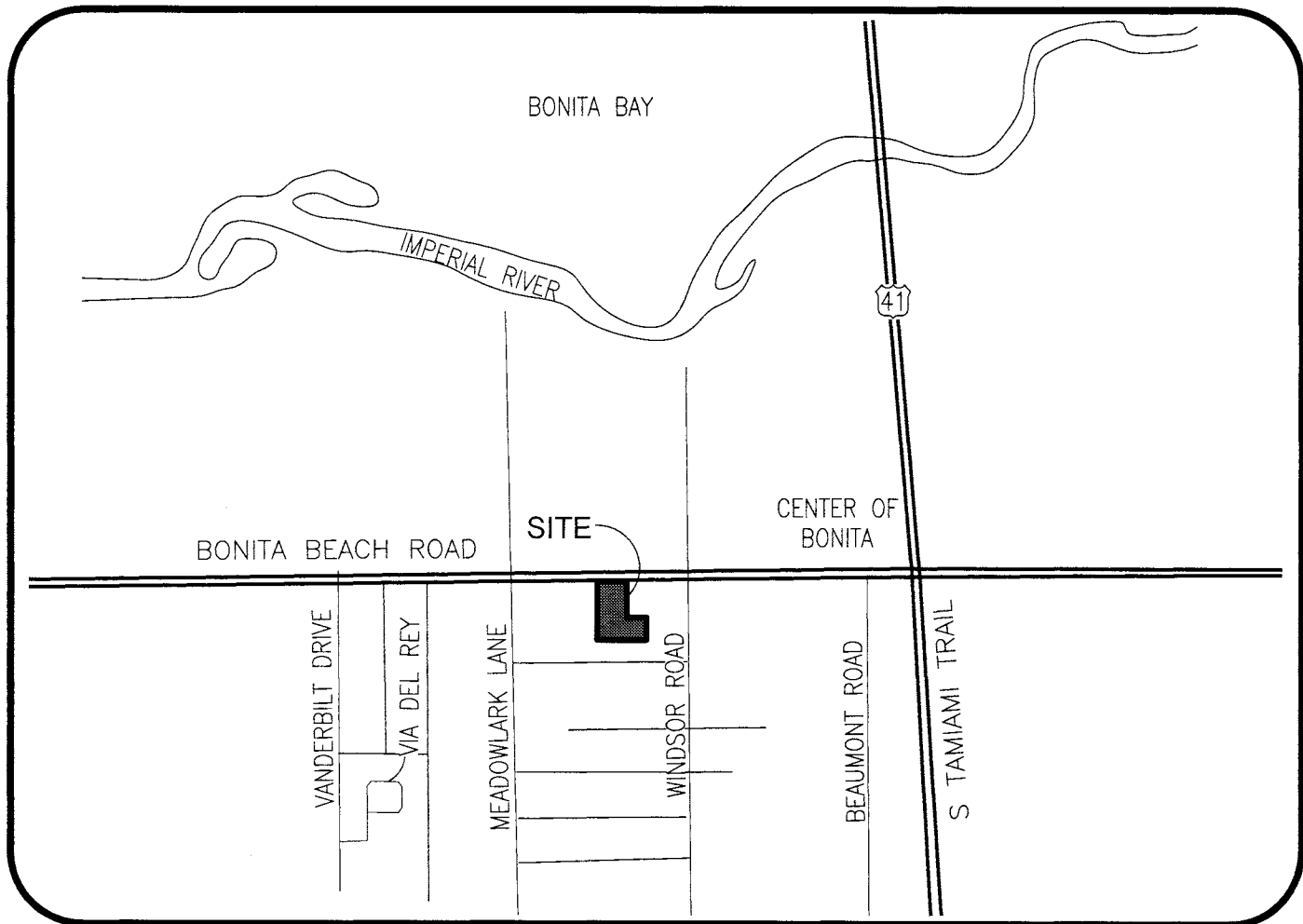
VI. EXHIBITS

- A. Site Plan
- B. Architectural Conceptual Renderings

LEGEND

- POC POINT OF COMMENCEMENT
PIB POINT OF BEGINNING
PIP FOUND IRON PIPE
PIR FOUND 5/8" IRON ROD
SIR SET 5/8" IRON ROD w/CAP, L.B. #5151
FCM FOUND CONCRETE MONUMENT
SQM SET CONC. MONUMENT w/ALUMINUM DISK, L.B. #5151
FPK FOUND PARKER KALON NAIL
SPK SET PARKER KALON NAIL w/ALUMINUM DISK, L.B. # 5151
FDH FOUND DRILL HOLE
SDH SET DRILL HOLE
FMN FOUND MAG NAIL
FND FOUND
(P) PLAT
(M) MEASURED
(C) CALCULATED
(D) DEED
PB PLAT BOOK
OR OFFICIAL RECORDS BOOK
PG PAGE(S)
PSM PROFESSIONAL SURVEYOR AND MAPPER
LB LICENSED BUSINESS
SPC STATE PLANE COORDINATES
ROW RIGHT-OF-WAY
PUE PUBLIC UTILITY EASEMENT
CUE COUNTY UTILITY EASEMENT
UE UTILITY EASEMENT
AE ACCESS EASEMENT
DE DRAINAGE EASEMENT
LME LAKE MAINTENANCE EASEMENT
LBE LANDSCAPE BUFFER EASEMENT
IRRE IRRIGATION EASEMENT
FPL FLORIDA POWER AND LIGHT
BSUE BONITA SPRINGS UTILITY EASEMENT
NAVD NORTH AMERICAN VERTICAL DATUM OF 1988
NGVD NATIONAL GEODETIC VERTICAL DATUM OF 1929
ELEV ELEVATION
INV INVERT ELEVATION
RM RM ELEVATION
A/C AIR CONDITIONING UNIT/PAID
CONC CONCRETE
CMP CORRUGATED METAL PIPE
CPP CORRUGATED PLASTIC PIPE
RCP REINFORCED CONCRETE PIPE
CHW CONCRETE HEADWALL
TOB TOP OF BANK
TOS TOE OF SLOPE
EOW EDGE OF WATER
C CENTER LINE
EOP EDGE OF PAVEMENT
BOL BOLLARD
● GREASE TRAP
⑤ SANITARY MANHOLE
○ CLEAN OUT
SV SEWER VALVE
CATCH BASIN
① DRAINAGE MANHOLE
MES MITERED END
YD YARD DRAIN
WV WATER VALVE
WM WATER METER
BACK FLOW PREVENTOR
FIRE HYDRANT
○ FIRE DEPARTMENT CONNECTION
BACTERIA SAMPLE POINT
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E ELECTRIC RISER/BOX/METER
ET ELECTRIC TRANSFORMER
TL TRAFFIC LIGHT
UNDERGROUND UTILITY MARKER
SIGN SIGN ON POLE
○ OAK TREE
P PALM TREE
PINE TREE
○ 2" POLY TUBE STUB OUT
CCR CERTIFIED CORNER RECORD

— FZ — FZ — FZ — FZ —
APPROXIMATE FLOOD ZONE LINE



VICINITY MAP
NOT TO SCALE

ATTACHMENT A

EXCEPTIONS FROM COVERAGE

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH POLICY NUMBER OF6-8812873, AND A POLICY DATE OF OCTOBER 24, 2020 AT 7:50 AM. WITH AN ENDORSEMENT REMOVING EXCEPTIONS 4, 5, 10 & 11, DATED OCTOBER 29, 2020.

EXCEPTIONS 1, 7, 9, & 13 NOTHING TO SHOW

EXCEPTIONS 2-6, 10, & 11 REMOVED

EXCEPTION 8 GRANT OF EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 3392, PAGE 3638, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (AFFECTS THE SUBJECT PARCEL, SHOWN HEREON)

EXCEPTION 12 LEE COUNTY ORDINANCE NO. 86-14 RECORDED NOVEMBER 30, 1990 IN OR BOOK 2189, PAGE 3281; AND AMENDED BY ORDINANCE NO. 86-38 IN OR BOOK 2189, PAGE 3334, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. (BLANKET IN NATURE, NOT SHOWN HEREON)

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED UTILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AS BEING S 89°06'44" W.

2. THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE COMMITMENT ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY WITH POLICY NUMBER OF6-8812873, AND A POLICY DATE OF OCTOBER 24, 2020 AT 7:50 AM. WITH AN ENDORSEMENT REMOVING EXCEPTIONS 4, 5, 10 & 11, DATED OCTOBER 29, 2020 MAY BE SUBJECT TO EASEMENTS, RESERVATIONS AND/OR RESTRICTIONS OF RECORD. ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

3. ELEVATIONS SHOWN HEREON ARE IN FEET AND ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988. ELEVATIONS WERE DERIVED BY DIFFERENTIAL LEVELING FROM NGS BENCHMARK T 718, HAVING A PUBLISHED ELEVATION OF 11.27 FEET

4. THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE AE, HAVING A BASE FLOOD ELEVATION OF 10.0' AND FLOOD ZONE X HAVING NO BASE FLOOD ELEVATION PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 12071C 0658 F, DATED 8/28/2008. AND FLOOD ZONE X HAVING NO BASE FLOOD ELEVATION PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 12071C 0654 F, DATED 8/28/2008. FLOOD LINES SHOWN HEREON WERE OBTAINED FROM A LEE COUNTY GIS FILE AND ARE ASSUMED TO BE APPROXIMATE.

5. CERTAIN FEATURES REPRESENTED BY SYMBOLS MAY NOT BE SHOWN AT THEIR TRUE LOCATION AND/OR SCALE IN ORDER TO BE ABLE TO DEPICT THEM ON THIS MAP.

6. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.

7. THIS SURVEY DOES NOT ADDRESS ANY ENVIRONMENTAL CONCERNS, ENDANGERED WILDLIFE OR JURISDICTIONAL WETLANDS, IF ANY, EXCEPT AS SHOWN ON THIS SURVEY.

8. THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.

9. THIS SURVEY IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SURVEY MAP ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.

10. UNLESS OTHERWISE NOTED, BELOW GROUND UTILITIES AND FOUNDATIONS WERE NOT LOCATED FOR THE PURPOSES OF THIS SURVEY.

11. BY SIGNING BELOW I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.051, F.A.C., PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

12. OWNERSHIP AND ADDRESS INFORMATION SHOWN HEREON WAS TAKEN FROM THE LEE COUNTY PROPERTY APPRAISER WEBSITE AT THE TIME OF THIS SURVEY.

PROPERTY DESCRIPTION

(PER THE PROVIDED TITLE COMMITMENT)
THE SOUTH 188 FEET OF THE NORTH 455 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4, LESS THE SOUTH 38.00 FEET OF THE EAST 130.00 FEET OF THE NORTH 305.00 FEET,

TOGETHER WITH THE EAST 120 FEET OF THE WEST 200 FEET OF THE NORTH 220 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4,

TOGETHER WITH THE SOUTH 47 FEET OF THE NORTH 267 FEET OF THE WEST 200 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 ALL OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA.

SUBJECT TO STATE ROAD RIGHT-OF-WAY FOR STATE ROAD S-865. ALSO BEING DESCRIBED AS THE FOLLOWING:

A PARCEL OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 4 THENCE (BEARINGS CITED HEREIN ARE IN THE MERIDIAN ASSUMING THE NORTH LINE OF SAID NORTHWEST QUARTER AS BEARING SOUTH 89°57'00" WEST, AND ALL OTHER BEARINGS ARE RELATIVE THERETO) SOUTH 89°57'00" WEST, ALONG THE SAID NORTH LINE, A DISTANCE OF 460.75 FEET; THENCE SOUTH 00°13'22" WEST, A DISTANCE OF 67.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF BONITA BEACH ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°13'22" WEST, A DISTANCE OF 238.00 FEET; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 130.19 FEET; THENCE SOUTH 00°12'50" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 89°57'00" WEST, A DISTANCE OF 330.54 FEET; THENCE NORTH 00°14'10" EAST, A DISTANCE OF 235.00 FEET; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 80.10 FEET; THENCE NORTH 00°13'47" EAST, A DISTANCE OF 153.00 FEET TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 89°57'00" EAST, A DISTANCE OF 120.15 FEET MORE OR LESS TO THE POINT OF BEGINNING.

AND

THE WEST 80 FEET OF THE NORTH 220 FEET OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA. SUBJECT TO STATE ROAD RIGHT-OF-WAY FOR STATE ROAD S-865.

CONTAINING 2.23 ACRES, MORE OR LESS.

CERTIFIED TO:

3601 BONITA BEACH, LLC
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
FORSYTH & BRUGGER, P. A.
FINEMARK NATIONAL BANK & TRUST
MIDWEST ONE BANK

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, AND 5, OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON 10/01/21 FOR THE FENCE LOCATION AND 2/12/20 FOR ALL OTHER IMPROVEMENTS.

Donald L. Saintenoy III
DONALD L. SAINTENOY III
P.S.M. #6761, FOR THE FIRM

11/2/21
DATE

REVISION: REMOVED EXCEPTION LABEL CARRIED OVER FROM PRIOR TITLE DOCUMENTS 11-1-2021.
REVISION: REVISED PER NEW TITLE DOCUMENTS 10-19-2021.
REVISION: ADDED NEW FENCE LOCATION 10-15-2021.
REVISION: ADDED OFFSITE EASEMENT 4-5-2021.
REVISION: REVISE BOUNDARY BEARING LABELS 3-9-2021.
REVISED: ADDED CERTIFICATIONS 10-13-2020



GradyMinor

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

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

DRAWN BY:	KJG
CHECKED BY:	DLS
JOB CODE:	NRDBBR
SCALE:	N/A
DATE:	13 AUGUST 2020
FILE:	20-11-ALTA.DWG
SHEET:	1 of 2

ALTA / NSPS LAND TITLE SURVEY

3601 BONITA BEACH RD SW
BONITA SPRINGS, FL 34134

LYING IN
SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

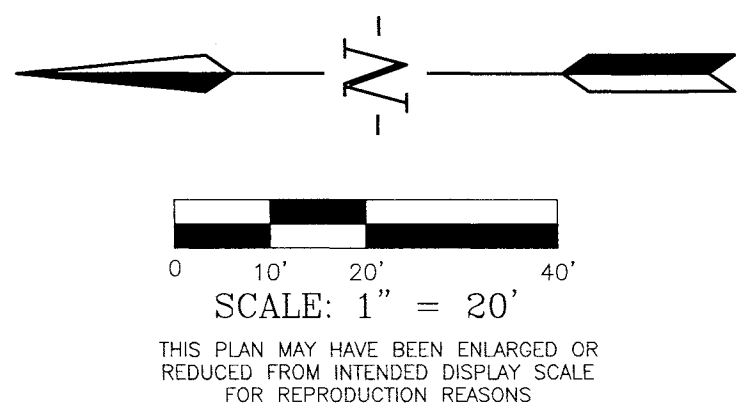
SEAL

NOT COMPLETE WITHOUT
SHEETS 1 AND 2 OF 2

LEGEND

POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING
FP	FOUND IRON PIPE
FIR	FOUND 5/8" IRON ROD
SIR	SET 5/8" IRON ROD w/CAP, L.B. #5151
FCM	FOUND CONCRETE MONUMENT
SOM	SET CONC. MONUMENT w/ALUMINUM DISK, L.B. #5151
FPK	FOUND PARKER KALON NAIL
SMN	SET MAG NAIL w/ALUMINUM DISK, L.B. # 5151
FDH	FOUND DRILL HOLE
SDH	SET DRILL HOLE
FMN	FOUND MAG NAIL
FND	FOUND
(P)	PLAT
(M)	MEASURED
(C)	CALCULATED
(D)	DEED
PB	PLAT BOOK
OR	OFFICIAL RECORDS BOOK
PG	PAGE(S)
PSM	PROFESSIONAL SURVEYOR AND MAPPER LICENSED BUSINESS
LB	STATE PLANE COORDINATES
SPC	RIGHT-OF-WAY
ROW	PUBLIC UTILITY EASEMENT
PUE	COUNTY UTILITY EASEMENT
CUE	UTILITY EASEMENT
UE	ACCESS EASEMENT
AE	DRAINAGE EASEMENT
DE	LAKE MAINTENANCE EASEMENT
LME	LANDSCAPE BUFFER EASEMENT
IBE	IRRIGATION EASEMENT
IRRE	FLORIDA POWER AND LIGHT
FPL	BONITA SPRINGS UTILITY EASEMENT
BSUE	NORTH AMERICAN VERTICAL DATUM OF 1988
NAVD	NATIONAL GEODETIC VERTICAL DATUM OF 1929
NGVD	ELEVATION
ELEV	INVERT ELEVATION
INV	RIM ELEVATION
RM	A/C
A/C	CONCRETE
CONC	CORRUGATED METAL PIPE
CMP	CORRUGATED PLASTIC PIPE
CPP	REINFORCED CONCRETE PIPE
ROP	CONCRETE HEADWALL
CHW	TOP OF BANK
TOB	TOE OF SLOPE
TOS	EDGE OF WATER
EW	CENTER LINE
CL	EDGE OF PAVEMENT
EOP	BOLLARD
BOL	GREASE TRAP
GT	SANITARY MANHOLE
SM	CLEAN OUT
CO	SEWER VALVE
SV	CATCH BASIN
CB	DRAINAGE MANHOLE
DM	MITERED END
ME	YARD DRAIN
YD	WATER VALVE
WV	WATER METER
WM	BACK FLOW PREVENTOR
BFP	FIRE HYDRANT
FH	FIRE DEPARTMENT CONNECTION
FD	BACTERIA SAMPLE POINT
BS	AIR RELEASE VALVE
ARV	IRRIGATION VALVE/ CONTROL VALVE
IRV	GAS VALVE
GV	GAS METER/SERVICE
GSM	GAS MARKER
GMM	UTILITY POLE - WOOD
UP	UTILITY POLE - CONCRETE
UC	GUY ANCHOR
GA	OVERHEAD WIRES
OW	LIGHT POLE
LP	TELEPHONE MANHOLE
TM	TELEPHONE RISER/BOX
TR	CABLE TELEVISION RISER/BOX
CT	ELECTRIC MANHOLE
EM	ELECTRIC RISER/BOX/METER
ER	ELECTRIC TRANSFORMER
ET	TRAFFIC LIGHT
TL	UNDERGROUND UTILITY MARKER
UM	SIGN ON POLE
SO	OAK TREE
OT	PALM TREE
PT	PINE TREE
PN	1" POLY TUBE STUB OUT
PTO	UNKNOWN TREE
UT	CERTIFIED CORNER RECORD
CCR	

APPROXIMATE FLOOD ZONE LINE



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

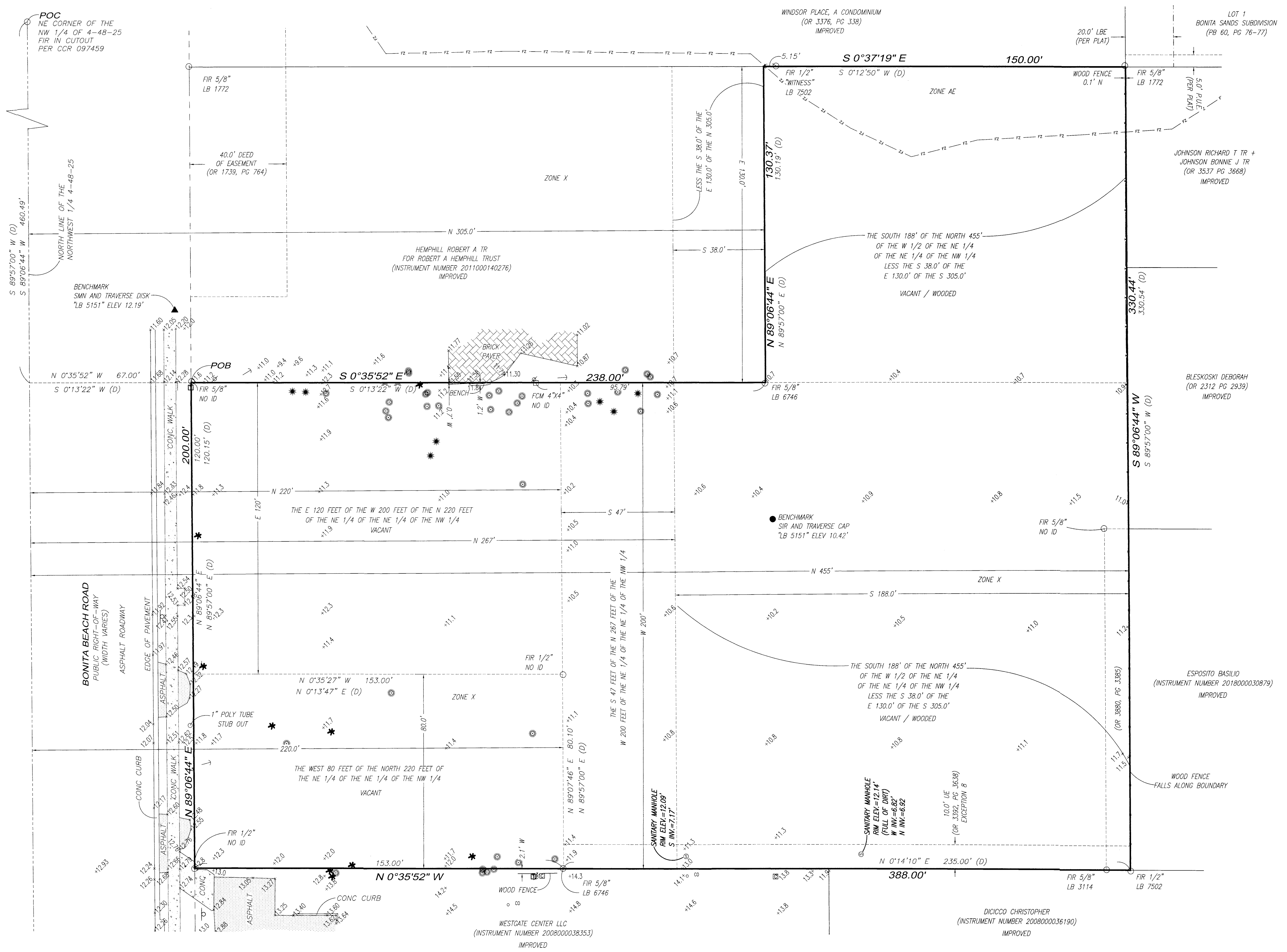
DRAWN BY:	KJG
CHECKED BY:	DLS
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SHEET:	2 of 2

ALTA / NSPS LAND TITLE SURVEY

3601 BONITA BEACH RD SW
 BONITA SPRINGS, FL 34134

LYING IN
 SECTION 4, TOWNSHIP 48 SOUTH, RANGE 25 EAST
 LEE COUNTY, FLORIDA

NOT COMPLETE WITHOUT
 SHEETS 1 AND 2 OF 2



January 6, 2022 Neighborhood Meeting Summary

The required post sufficiency information meeting for the Bonita Diner Special Exception (SE) was held at 5:30 p.m. on January 6, 2022 at the Bonita Springs Fire Department at 27701 Bonita Grande Drive.

Representatives in attendance for the applicant were:

Sharon Umpenhour - Q. Grady Minor & Associates

Wayne Arnold - Q. Grady Minor & Associates

Maureen Minker - MHK Architecture

Skip Fox - Smith Organics

Six members of the public were in attendance. A sign in sheet was provided and it has been attached to the meeting transcript.

Mr. Arnold opened the meeting and described that the Special Exception was needed to obtain approval for outdoor consumption of alcoholic beverages because the restaurant is located within 500' of a church and residentially zoned property. The restaurant use is permitted by right in the Bonita Beach Road Corridor Overlay; however, the outdoor service of alcohol does require the approval of the Special Exception by City Council.

Mr. Arnold provided a copy of the site plan for the 150+ seat restaurant and highlighted the restaurant building, parking areas, and buffers. Additional visual details of the outdoor courtyard dining area were displayed and discussed. Mr. Arnold highlighted the location of the enclosed building areas, proposed wall locations and the outdoor courtyard seating area. Images of the proposed courtyard seating area was shown to the attendees.

Members of the public asked questions regarding landscape buffer widths and wall heights. The project architect, Maureen Minker responded with information regarding the building height, which is approximately 19' high, and that the landscape buffer adjacent to the residential properties will be 15' wide with an 8' tall solid wall.

Other questions asked related to hours of operation and outdoor music. Skip Fox representing the Bonita Beach Diner ownership group responded that the restaurant will be open for lunch and dinner during the week with closing at 10:00 p.m., except Sundays which would close at 9:00 p.m. Brunch would be offered on Saturday and Sunday mornings with opening hours at 9:30 a.m. or 10:00 a.m.

Mr. Fox indicated that the Lake Park Diner in Naples does not have live entertainment but does have background music. Mr. Fox indicated that if live entertainment is offered it would be a solo performer and that if the sound was amplified it would be with small speakers.

Mr. Arnold provided the attendees with contact information and links to the project information on their company website.

The meeting was adjourned at approximately 6:00 p.m.



ATTACHMENT C

From: Richard Johnson <rtjohn86@gmail.com>

Date: November 30, 2020 at 8:50:51 AM EST

To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>

Subject: RE: case#SPE20-75174-BOS

To Mary,

We are Richard and Bonnie Johnson and we live at 3566 McComb Lane in Bonita. Our property abuts the south eastern property edge of the property that is questioned in this case. We are very concerned about the building of such a large magnitude for outside entertainment, noise and disruption of our quiet residential neighborhood. We have lived here since building our home in 1989 and have enjoyed the restfulness of this neighborhood. We really hope that the city will not allow this building in our back yard. We are 93 and 82 years old and hope our concern will be taken in consideration at the meetings. Thank you,
Bonnie and Richard Johnson.

From: jeanparadis@gmail.com <jeanparadis@gmail.com>

Sent: Monday, November 30, 2020 12:55 PM

To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>

Subject: Case #SPE20-75174-BOS

Hello Ms Zizzo,

We live at 3571 McComb Lane and have questions about the development on the above project.

The plans seem to be a stretch for the size of the property.....outdoor seating for 200, outdoor elevated stage .

We plan to attend meetings so we can understand the scope of the project. I'm sure the architects are aware of sound measurements . Please add us to your information regarding meetings. Thank you.

Regards,

Jean and Tom Paradis

Sent from my iPhone

From: ab <josefinedassau@aol.com>

Sent: Thursday, December 3, 2020 2:11 PM

To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>

Subject: Case# SPE20-75174-BOS

Dear Ms. Zizzo,

We're part residents of Bonita for 40 years now.

Since 1992 we're living on McComb Ln 3581

May we express our big concerns about the exception for zoning Bonita Diner Special on Bonita Beach Road.

In our opinion and we're sure also from our neighborhood, we're worrying about the size of the building and also the planned outdoor bar, outdoor games and live music.

Isn't to call it a Diner misleading?

We've had this problem once before, when "Sneaky Petes" opened and was planned as a family restaurant. It turned out to be a Bar also and the music is very loud sometimes. That's inside!

Can't imagine how noisy this entertainment outside will be and how negative it'll be for our quiet neighborhood and also for our property values.

As you're the City Planner, we do need your help please.

Thank you very much in advance.

Sincerely,

Josefine and Willi Dassau

From: Uta Ehmke <ehmkeuta@gmail.com>
Sent: Saturday, December 5, 2020 6:38 AM
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Subject: Case# SPE20-75174-BOS
Importance: High

Dear Ms. Zizzo,

~~we're part time residents of Bonita since 1990 in 3561 McComb Ln, Bonita Springs, FL 34134~~

We must express our biggest concerns about the exception for zoning Bonita Diner Special on Bonita Beach Road.

In our opinion and we're sure also from our neighborhood, we're worrying about the size of the building and also the planned outdoor bar, outdoor games and live music.

Isn't to call it a Diner misleading?

Can't imagine how noisy this entertainment outside will be and how negative it'll be for our quiet neighborhood and also for our property values.

As you're the City Planner, we really do need your help!!!

Thank you very much in advance.

Sincerely yours
Werner Mehrbrodt & Uta Ehmke

From: Kay Happel <khap33@outlook.com>
Sent: Sunday, December 6, 2020 3:50 PM
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Cc: laura.carr@cityofbonitasprings.org
Subject: Bonita Diner zoning exception case#SPE20-75174-BOS

Dear Mary Zizzo,

My husband and I are opposed to subject zoning exception, as are many of our neighbors. A new business should enhance the immediate neighborhood; this "Diner" as proposed, would damage our Florida life style and thus our property values. There are building codes requiring that we contain our water drainage so as not to flood our neighbor. In the same way, we also contain our noise so that we don't impose our lives on our neighbor. The fact that this business is all about "consumption outdoors" means that they cannot contain their noise; it will be heard for blocks. We will be forced to live indoors, close our windows and hope we can hear our TVs and sleep at night. This will devalue our property which we count on to sustain us through retirement.

This proposed "Diner" is really an all outdoor restaurant/bar/nightclub. The owners say it is not a nightclub because it is only open to 10pm(until they decide to stay open later).??? If this exception is approved, what's to stop them???

Noise factors – concerns to address

Outdoor capacity for 200-300 people -consuming food and drink
Large outdoor bar
Outdoor games
Outdoor elevated stage for live amplified music
Open 10am – 10pm with potential to be open later

We suggest that they enclose it all in a roofed building with sound proofing.

Or
Build a "Diner" like they built in Naples, Lake Park Diner,(no bar, no stage, no live music, no games).
Or
Change locations totally(not adjacent to residential property)

Sneaky Pete's has live music, in a building where they have added some sound proofing (after neighbor's complaints) which helped, but music is still heard at times inside the house. This "Diner" is Sneaky Pete's only outdoors. Imagine how loud and how far unobstructed noise will travel. Imagine this in your neighborhood from morning to 10pm. Would you want this, literally, in your back yard?

We have been fulltime residents at 3645 McComb Lane for 22 years and hope you will address our concerns and save our quiet neighborhood and our hard earned retirement.

Thank you

Kay Happel and Patrick Lapointe

Sent from [Mail](#) for Windows 10

From: Michael Zandlo <mikezandlo@gmail.com>
Sent: Wednesday, December 9, 2020 1:02 PM
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Subject: Case #SPE20-75174-BOS

Hi Mary,

Has a date been set for the December meeting about the special exemption?

I have some serious concerns about this project regarding noise levels. The neighborhood had a problem with noise levels from Sneaky Petes and their live music is indoors. I don't understand how an outdoor live music venue can be allowed considering all the complaints that were made about Sneaky Petes.

Is there a website where I can find more information about this project.

Thanks,

Mike Zandlo

From: David Hearnden <david3830@aol.com>
Date: December 9, 2020 at 8:01:19 PM EST
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Subject: #spe20-75174-BOS

Good morning my name is David Hearnden
3666McComb Lane Bonita Springs 34134.

About this request for planning of this restaurant, it is just a terrible idea. It is going to effect a lot of elderly people who live year round, right behind this proposed business. The amount of traffic that will come onto McComb lane will be tremendous. McComb Lane is a private rd, and right now it is used as a through rd by a lot of cars, in actuality they are trespassing. We are taxed the same as every other street east of us, those streets are county, we are not. The county refuse to do repairs to the drains, to prevent flooding, so my worry is that if there is a flood which is often and there is an accident. Then what happens, and with the late night drinking and up to 300 cars , some of which will use our street as a through fare it is a given that will happen. If the county was to asses us at a lower rate , so we could afford drainage , that might help. Up till then this plan is a disaster , not something Bonita needs, plus if it is like the other place they own it will not last. Then what, I honestly don't reckon you have given the welfare of year round residents any real thought. Please see that this is not brought to happen. On a another point our housing prices are going to tumble, and probably would not recover. Bonita would lose tax dollars on those sales.

Sent from my iPad

From: David Hearnden <david3830@aol.com>
Sent: Monday, December 14, 2020 3:42 PM
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Subject: Diner

Since my last e mail, two houses that would be effected by it, are now up for sale. Think there may be a couple more, mine being one of them Sent from my iPad

WESTGATE CENTER, 11c

4505 SE County Road 760

Arcadia, FL 34266

239-248-0020-Telephone

March 31, 2021

Derek Rooney
City Attorney
9101 Bonita Beach Road
Bonita Springs, FL 34135

Arleen Hunter
City Manager
9101 Bonita Beach Road
Bonita Springs, FL 34135

Rick Steinmeyer
District 1
9101 Bonita Beach Road
Bonita Springs, FL 34135

Jesse Purdon
District 2
9101 Bonita Beach Road
Bonita Springs, FL 34135

Laura E. Carr
District 3
9101 Bonita Beach Road
Bonita Springs, FL 34135

Chris Corrie
District 4
9101 Bonita Beach Road
Bonita Springs, FL 34135

Michael S. Gibson, Jr
District 5
9101 Bonita Beach Road
Bonita Springs, FL 34135

Fred Forbes
District 6
9101 Bonita Beach Road
Bonita Springs, FL 34135

John Dulmer III, AICP
Community Development Director
Department of Community Development
Planning & Zoning Division
9220 Bonita Beach Road, Suite 111
Bonita Springs, FL 34135

Mary Zizzo Esp., Planner II
Department of Community Development
Planning & Zoning Division
9220 Bonita Beach Road, Suite 111
Bonita Springs, FL 34135

Reference: Bonita Beach Diner or Bonita Diner
Case Numbers: DOS 20-75529-BOS
SPE 20-75174-BOS

Dear Ladies and Gentlemen:

My name is Paul Cartwright, I am the owner of Westgate Center, 3635-3665 Bonita Beach Road, the office complex located directly west of this proposed project. I am against having amplified music/live entertainment on this proposed project.

I believe Bonita Beach Diner/Bonita Diner can legally operate without any special exemptions if it was operated inside an enclosed building. If this was done inside a building, odds are there would not be any noise that could possibly affect the businesses that are in my complex. However, they wish to have this all outside and that is why the request for a special exemption. If you allow this amplified music/live entertainment to go on outside there is a possibility that it disrupts the businesses in my complex and could possibly be a financial hardship to me. To resolve the noise problem, I would have to call the sheriff's department and then based on the noise complaint the sheriff can decide if it actually is a problem or not. Why should I be put through this possible hardship?

At the public hearing on September 21, 2020, at the Bonita Springs Fire Station, I asked them if they had the music going on at their Naples complex (Lake Park Diner) where I could go and listen to the music to see if it would be a hardship or not. At that time, their representative told me that "No they didn't have the amplified music, that they were in to get approval with the city of Naples". Upon further investigation, I found out that this was a false statement. They were denied months earlier amplified music at the city council meeting on February 19, 2020. Reference petition number 19-LE10. Please review on Naples TV city council meeting archive dated February 19, 2020, item number 13. Also, at that meeting they were asked about their code violations. They had been cited for increasing their seating without approval. Additionally, numerous city council members were concerned about the parking that was taking place on road right of ways and in neighboring parking lots.

The reason I bring all this up is on their application with the city of Bonita Springs, they said they would be in charge of the volume control. Based on their pass history it doesn't look like they follow the rules too well. Additionally, they lied at the Bonita public hearing on this matter knowing full well they had been turned down for the same application that they were trying to get out of the city of Bonita Springs. You have to ask yourself why were they hiding this matter.

I went down to the city of Naples to research this matter on March 29, 2021. After talking to the city, I went by the applicants Naples location (Lake Park Diner) to get a feel for it. It was lunch time and the place was packed. Not only were all the chairs taken but there was approximately 15 people in line, I assume for take-out. Business was extremely good. Even watching the Naples council meeting of February 2020, the council members all expressed how well this restaurant was doing. On Lake Park Diner's Facebook page, they show where they have received numerous awards every year and also it shows where they did an expansion and that it would be ready October 2020. **ALL THIS WAS DONE WITHOUT AMPLIFIED OR LIVE MUSIC!** They're so successful that they plan on doing it again in Bonita Springs.

As it is currently zoned, Westgate Center tenants can operate 24 hours a day. There are no time restrictions to the hours my tenants can work. If you allow this special exemption on amplified music/live entertainment the city will have to prove now or in the future why they granted it to a business that has already proven they do not need the music to be successful. And at the same time possibly harming my complex and nearby residents. Please remember it is not only the job of the city council and city employees to bring in new business but also and more importantly to protect the current and long-standing taxpaying businesses and residents that have been in the city for many years.

If the city allows this, it will be quicker and easier for me to seek immediate litigation on this matter than deal with the possible noise and financial loss for many years to come. I believe a court will ask the same questions that I have asked and I believe the city will not be able to come up with a reasonable answer on why they approved this.

I URGE THE CITY COUNCIL TO DENY THIS SECIAL EXEMPTION FOR AMPLIFIED MUSIC/LIVE ENTERTAINMENT.

Respectfully,



Paul Cartwright

RETURN TO:
City of Bonita Springs
Community Development Department
Attn: Mary Zizzo
9220 Bonita Beach Road, Suite 109
Bonita Springs, FL 34135
mzizzo@cityofbonitaspringscd.org

Support ☒ Oppose ☐

Application: SPE20-75174-BOS, Bonita Diner Special Exception

DATE: 1/12/22
NAME: Pam Whitfield PHONE: 239-777-0683
ADDRESS: 3646 McArthur Ln CITY/STATE/ZIP: Bonita 34134

RECOMMENDATIONS AND POSTPONEMENTS: The Board may accept, reject or modify staff recommendations and take such other appropriate and lawful action including continuing said public hearings.

CONDUCT OF HEARINGS: These hearings are quasi-judicial and must be conducted to afford all parties due process. Any communication that Council Members have outside of the public hearing must be fully disclosed at the hearing. Anyone who wishes to speak at the hearing will be sworn in and may be subject to questions by the board, city staff or applicant. Public comment is encouraged, and all relevant information should be presented to the Board so a fair and appropriate decision can be made. Tapes are limited to three (3) minutes in length and are to be submitted to the Zoning Division one week prior to the meeting date for review. All tapes/information submitted for the public record will not be returned.

GROUP REPRESENTATIVES: Any person representing a group or organization must provide written authorization to speak on behalf of that group. The representative shall inform Staff prior to the hearing of their intent to speak on behalf of a group and provide staff the name of that group.

I will have a representative at the Zoning Board Hearing and/or City Council. My representative's name, address, and phone are:

NAME: _____ PHONE: _____
ADDRESS: _____ CITY/STATE/ZIP: _____

APPEALS: If a person decides to appeal any final decision made by the City Council, with respect to any matter considered at such hearing, they are responsible at their own expense for ordering from the court reporter to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence on which the appeal is to be based.

From: willidassau@aol.com

Date: January 27, 2022 at 8:10:57 AM EST

To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>

Subject: Bonita Diner Special Exception

Reply-To: willidassau@aol.com

Dear Mrs. Zizzo,

Again we would like to express our concerns of the exception for outdoor consumption at Bonita Diner. We're a single family neighborhood and having outdoor activities at a restaurant will bring a lot of noise especially for our old neighbors across the street on McComb Ln.

As I wrote before we knew what happened when Sneaky Pete's opened and it turned out that it was not just a Family Restaurant like it was proposed at the beginning.

Thank you very much for your understanding and hopefully help.

Sincerely,
Willi & Josefine Dassau

RETURN TO:
City of Bonita Springs
Community Development Department
Attn: Mary Zizzo
9220 Bonita Beach Road, Suite 109
Bonita Springs, FL 34135
mzizzo@cityofbonitaspringscd.org

Support _____ Oppose X

Application: SPE20-75174-BOS, Bonita Diner Special Exception

DATE: 1-27-2022
NAME: Will Dassan PHONE: 239-495-7372
ADDRESS: 3581 McComb Ln CITY/STATE/ZIP: Bonita Springs, FL 34134

RECOMMENDATIONS AND POSTPONEMENTS: The Board may accept, reject or modify staff recommendations and take such other appropriate and lawful action including continuing said public hearings.

CONDUCT OF HEARINGS: These hearings are quasi-judicial and must be conducted to afford all parties due process. Any communication that Council Members have outside of the public hearing must be fully disclosed at the hearing. Anyone who wishes to speak at the hearing will be sworn in and may be subject to questions by the board, city staff or applicant. Public comment is encouraged, and all relevant information should be presented to the Board so a fair and appropriate decision can be made. Tapes are limited to three (3) minutes in length and are to be submitted to the Zoning Division one week prior to the meeting date for review. All tapes/information submitted for the public record will not be returned.

GROUP REPRESENTATIVES: Any person representing a group or organization must provide written authorization to speak on behalf of that group. The representative shall inform Staff prior to the hearing of their intent to speak on behalf of a group and provide staff the name of that group.

I will have a representative at the Zoning Board Hearing and/or City Council. My representative's name, address, and phone are:	
NAME: <u>Jean Paradis</u>	PHONE: <u>470-260-5557</u>
ADDRESS: <u>3571 McComb Ln</u>	CITY/STATE/ZIP: <u>Bonita Springs, FL 34134</u>

APPEALS: If a person decides to appeal any final decision made by the City Council, with respect to any matter considered at such hearing, they are responsible at their own expense for ordering from the court reporter to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence on which the appeal is to be based.

From: Uta Ehmke <ehmkeuta@gmail.com>
Sent: Wednesday, January 26, 2022 11:31 AM
To: Mary Zizzo <MZizzo@cityofbonitaspringscd.org>
Cc: WM Mobil <wmehrbrodt1@gmail.com>
Subject: SPE20-75174-BOS

Dear Mrs. Zizzo,

find enclosed our opposing letter for the Bonita Diner Special Exception.

We are totally against that project close to our neighborhood!

It is:

- to close to our neighborhood

- will be too noisy

- too much traffic for Bonita Beach Rd, which is already overloaded with traffic!!!

CASE NUMBER: SPE20-75174-BOS

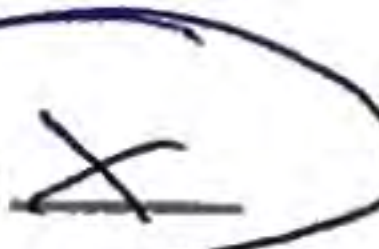
CASE NAME: Bonita Diner Special Exception

REQUEST: A special exception request at 3621 & 3601 Bonita Beach Rd, to allow outdoor consumption on premises, associated with a Restaurant, Group III use.

LOCATION: The subject property is located at 3621 and 3601 Bonita Beach Rd, Springs, FL 34134. STRAP: 04-48-25-B1-00016.0000 and 04-48-25-B1-00016.0010

Any person requiring special accommodations at any of the meetings because of a disability or physical impairment should contact Lisa Roberson, Director of Financial and Administrative Services, at 239-949-6262, at least 48 hours prior to the meeting. If a person decides to appeal a decision made by the council in any matter considered at this meeting/hearing, such person may need to ensure that a verbatim record of the proceeding is to be made, to include the testimony and evidence upon which any such appeal is to be based.

RETURN TO:
City of Bonita Springs
Community Development Department
Attn: Mary Zizzo
9220 Bonita Beach Road, Suite 109
Bonita Springs, FL 34135
mzizzo@cityofbonitaspringscd.org

Support _____ Oppose 

Application: SPE20-75174-BOS, Bonita Diner Special Exception

DATE: 1-26-2022

NAME: Werner Helbrodt

PHONE: 239-447-6682

ADDRESS: 3561 McComb Ln

CITY/STATE/ZIP: Bonita Springs, FL 34134

Signature:



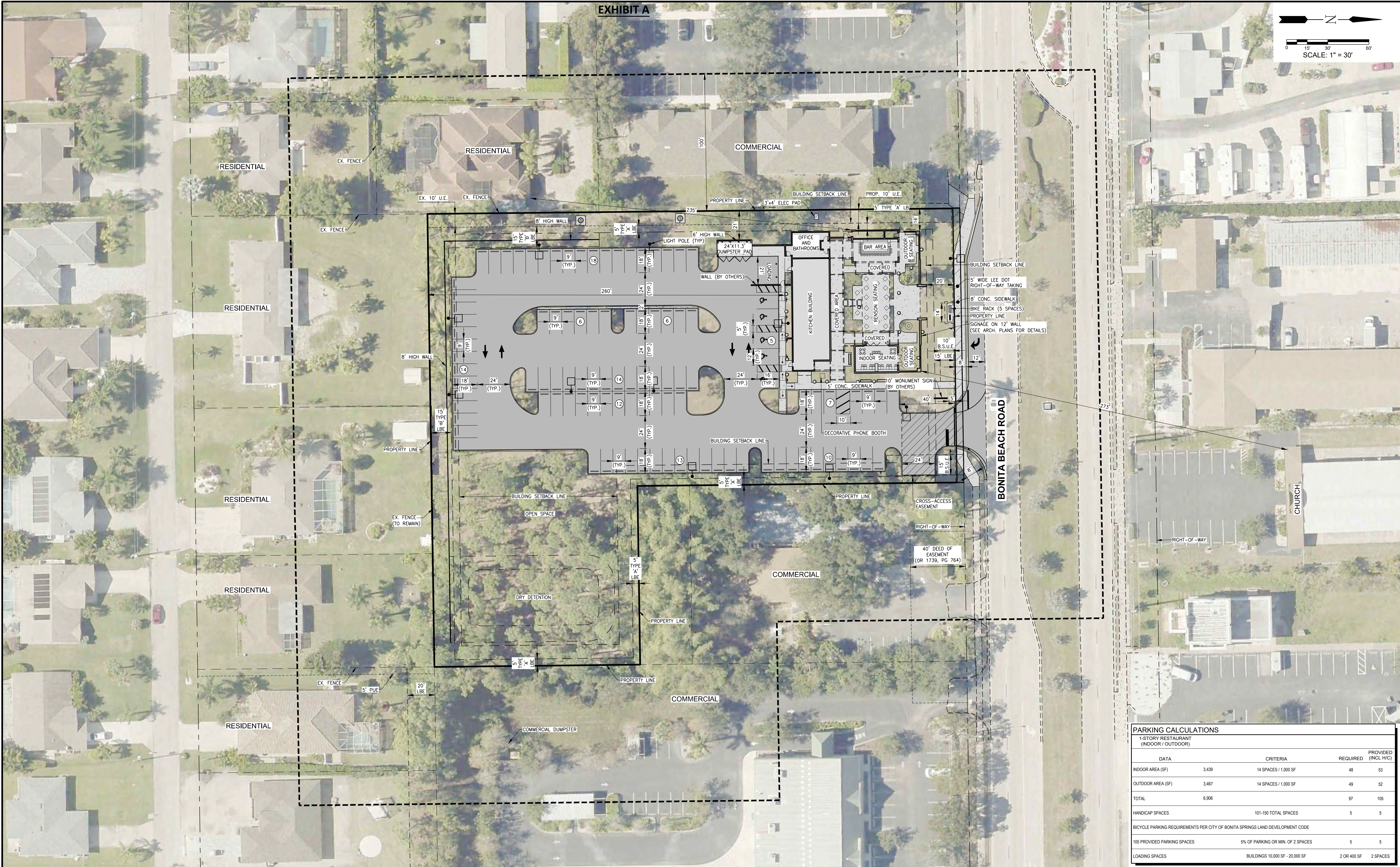
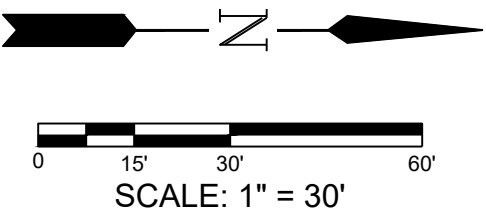


EXHIBIT A



PARKING CALCULATIONS				
1-STORY RESTAURANT (INDOOR / OUTDOOR)				
	DATA	CRITERIA	REQUIRED	PROVIDED (INCL. H/C)
INDOOR AREA (SF)	3,439	14 SPACES / 1,000 SF	48	53
OUTDOOR AREA (SF)	3,467	14 SPACES / 1,000 SF	49	52
TOTAL	6,906		97	105
HANDICAP SPACES		101-150 TOTAL SPACES	5	5
BICYCLE PARKING REQUIREMENTS PER CITY OF BONITA SPRINGS LAND DEVELOPMENT CODE				
105 PROVIDED PARKING SPACES		5% OF PARKING OR MIN. OF 2 SPACES	5	5
LOADING SPACES		BUILDINGS 10,000 SF - 20,000 SF	2 OR 400 SF	2 SPACES

LEGEND

CROSS-ACCESS EASEMENT

LEE COUNTY RIGHT-OF-WAY TAKING

Revision	Date	Description

DESIGNED BY: J.D.

DRAWN BY: S.T./K.L.M.

APPROVED: M.T.H.

JOB CODE: NROBBR

SCALE: 1" = 30'

By

GradyMinor

Civil Engineers • Land Surveyors • Planners • Landscape Architects

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

Bonita Springs: 239.947.1144 Fort Myers: 239.690.4380

www.GradyMinor.com

Q. Grady Minor and Associates, P.A.

3800 Via Del Rey

Bonita Springs, Florida 34134

BONITA BEACH DINER SPECIAL EXCEPTION

EXHIBIT IV.G

CONCEPTUAL SITE PLAN

MUNICIPALITY: CITY OF BONITA SPRINGS

SEC./TOWNSHIP/RNG: 04/48S/25E

DATE: OCTOBER 2020

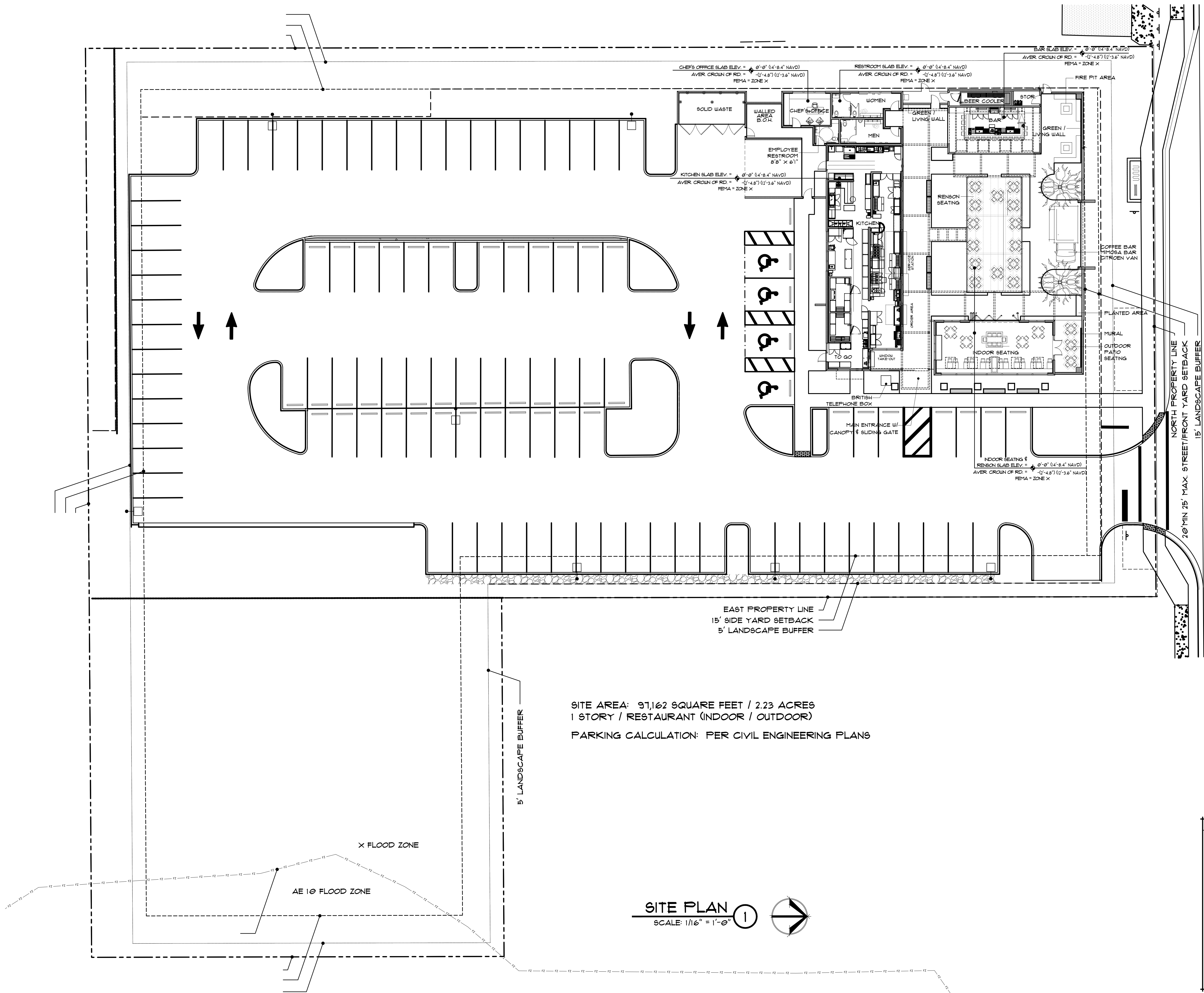
SUBMITTAL TYPE: SPECIAL EXCEPTION

SHEET 1 OF 1



Bonita Park Diner
3621 Bonita Beach Road
Bonita Springs, Florida 34134

WED 19 MAY 2021 12:51:00PM EST> \VOLUMES\DROPBOX\20018_3621 BONITA BEACH ROAD_LAKE_PARK DINER_SMITH\ARCHITECTURE\DRAWINGS\BASEFILES\DD2\MHK_20018_3621 BONITA BEACH ROAD_DD2_2021-03-25.DWG



SITE AREA: 91,162 SQUARE FEET / 2.23 ACRES
1 STORY / RESTAURANT (INDOOR / OUTDOOR)
PARKING CALCULATION: PER CIVIL ENGINEERING PLANS

SITE PLAN
SCALE: 1/16" = 1'-0"

SITE ELEVATION INFORMATION	
FEMA ZONE:	X ZONE
AVG. CROWN OF ROAD:	12.3' NAVD
MAIN INDOOR F.F.E.:	14'-8.4" NAVD
OUTDOOR ACTIVITY F.F.E.:	14'-8.4" NAVD

MHK
ARCHITECTURE
& PLANNING

975 6TH AVE/ENUE SOUTH
NAPLES FLORIDA 34102
PHONE: (239) 919-0786
WWW.MHKAP.COM

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CONSULTANT:

BONITA PARK DINER
ADAM SMITH
3621 BONITA BEACH ROAD SW
BONITA SPRINGS, FLORIDA 34134

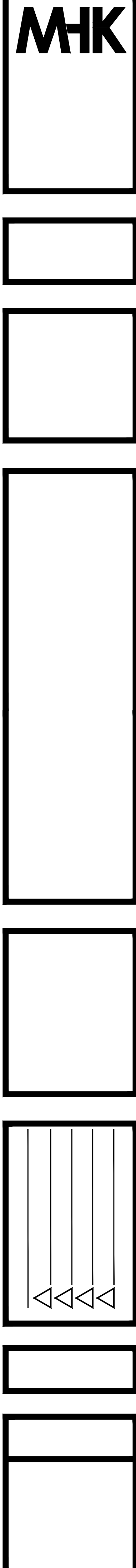
FLORIDA SEAL
REG# AR 16971
NOT FOR
CONSTRUCTION

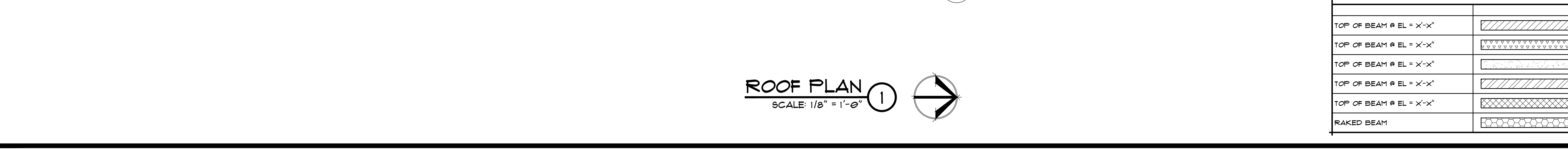
DATE:	05/20/21
SPECIAL EXCEPT. RESUB.	
ISSUE	

DRAWN BY: MHM
CHECKED BY: MHM

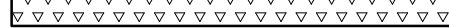
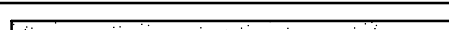
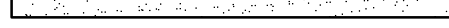
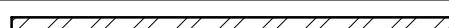
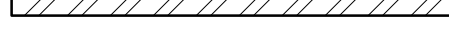
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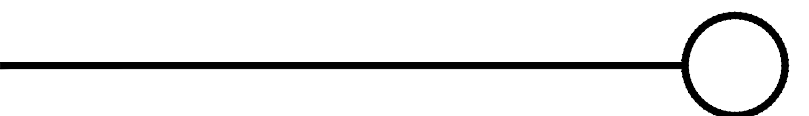
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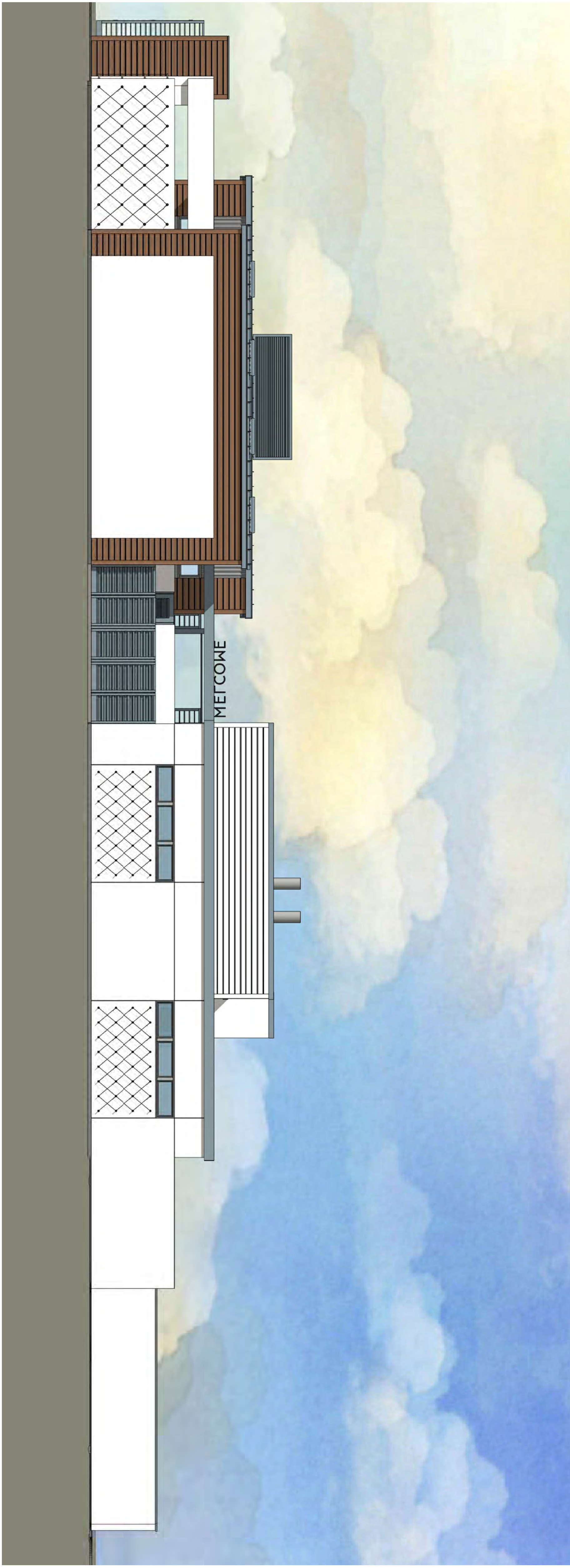
BEAM HEIGHT LEGEND:	
TOP OF BEAM @ EL = "X"-X"	
TOP OF BEAM @ EL = "X"-X"	
TOP OF BEAM @ EL = "X"-X"	
TOP OF BEAM @ EL = "X"-X"	
TOP OF BEAM @ EL = "X"-X"	
TOP OF BEAM @ EL = "X"-X"	
RAKED BEAM	

BEAM HEIGHT LEGEND:	
TOP OF BEAM @ EL = X'-X"	
TOP OF BEAM @ EL = X'-X"	
TOP OF BEAM @ EL = X'-X"	
TOP OF BEAM @ EL = X'-X"	
TOP OF BEAM @ EL = X'-X"	
RAKED BEAM	



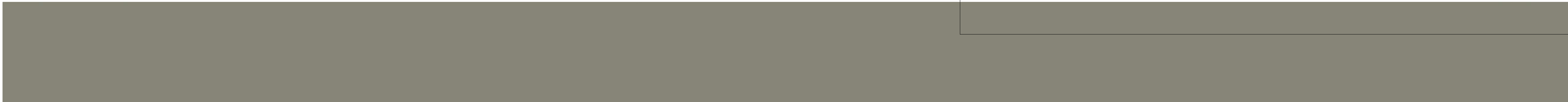


EAST ELEVATION
N.T.S.

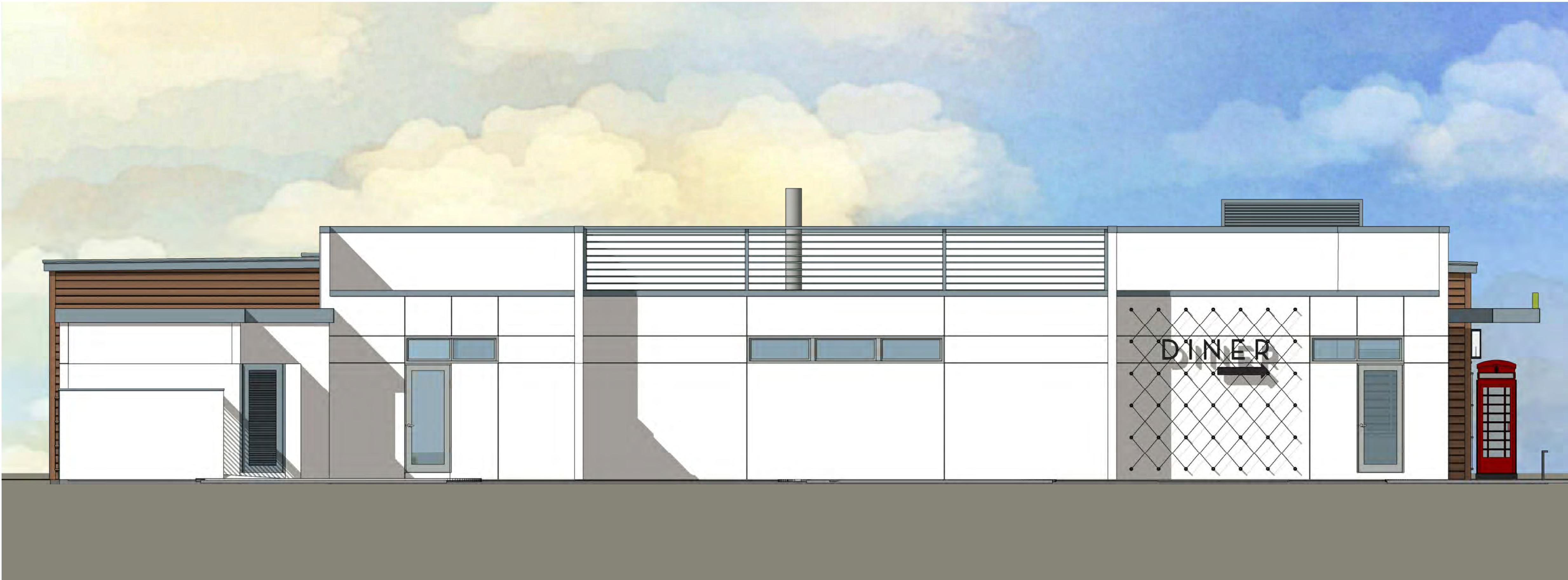


WEST ELEVATION
N.T.S.

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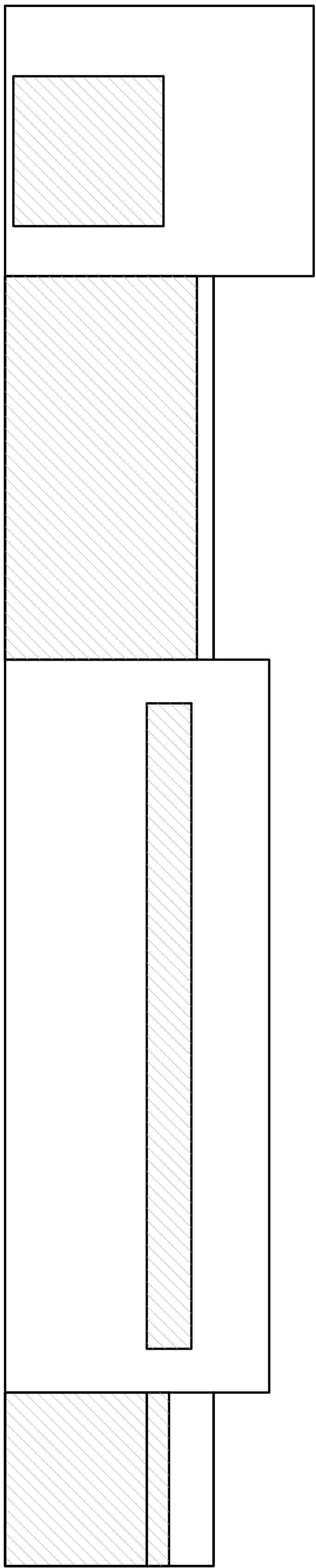
NORTH ELEVATION ①
N.T.S.



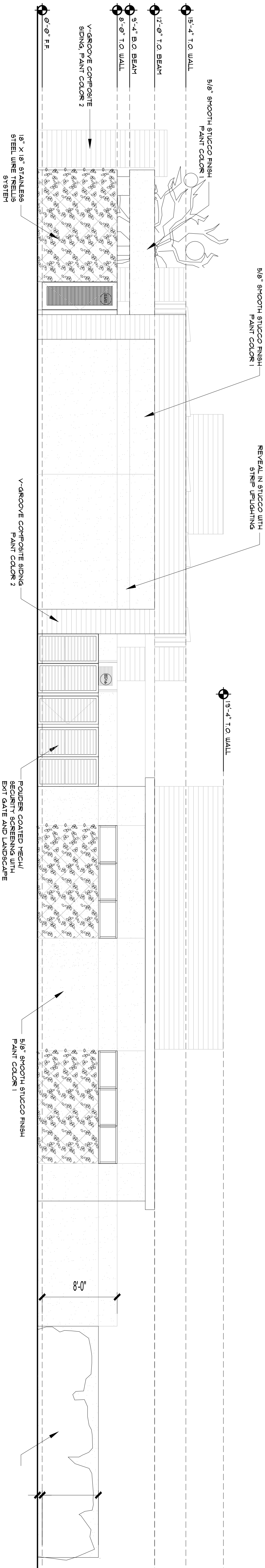
SOUTH ELEVATION ②
N.T.S.



AREA GLAZING/OPENING CALCULATIONS	
EAST ELEVATION	1,415 SQFT
RECD 30%	425 SQFT
OPENING	14 SQFT
TRELLIS	89 SQFT
TRANSOM WINDOWS	193 SQFT
OPEN AIR GATES	265 SQFT
TO GO SIDERS	81 SQFT
TOTAL	552 SQFT



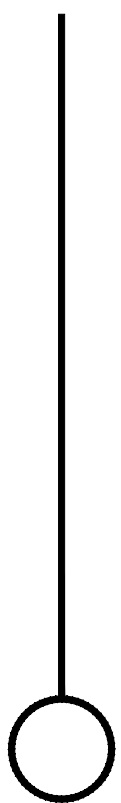
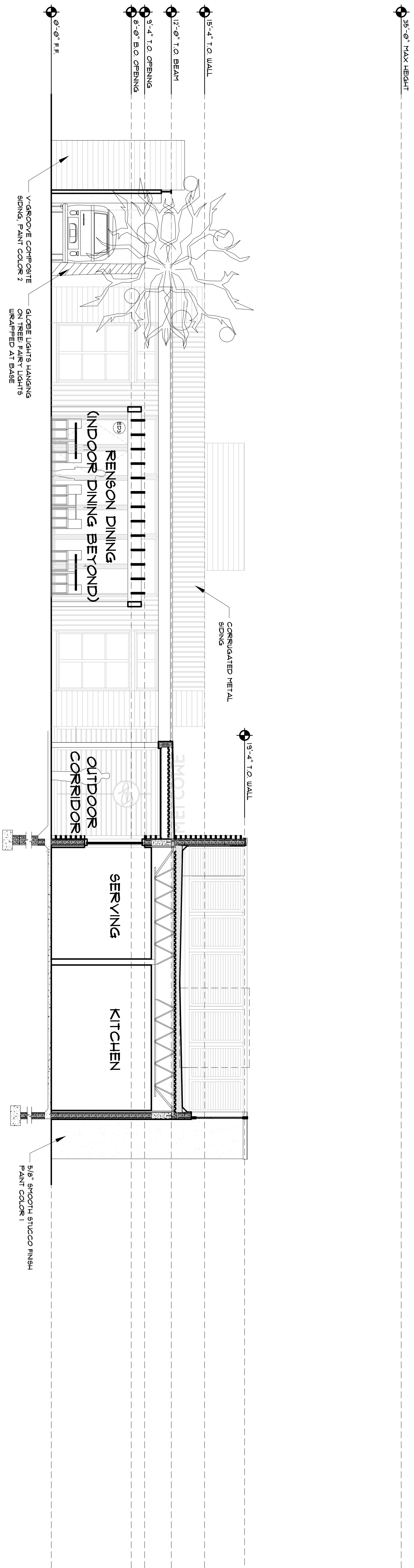
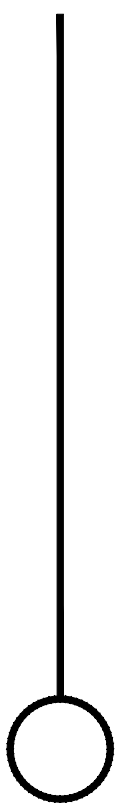
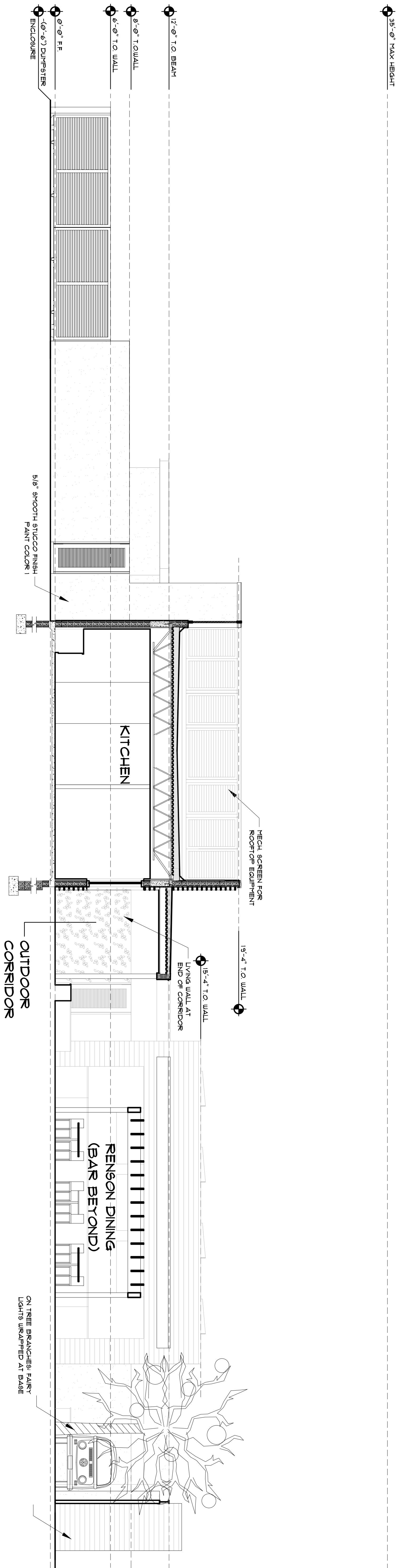
AREA GLAZING/OPENING CALCULATIONS	
WEST ELEVATION	1,664 SQFT
EAST ELEVATION	493 SQFT
REAR 30%	
OPENING	21 SQFT
TRELLIS	131 SQFT
WINDOWS	48 SQFT
TRELLIS UNDER	156 SQFT
WINDOWS	
HEAVY LANDSCAPE	160 SQFT
9 DUMPSTERS	
TOTAL	516 SQFT

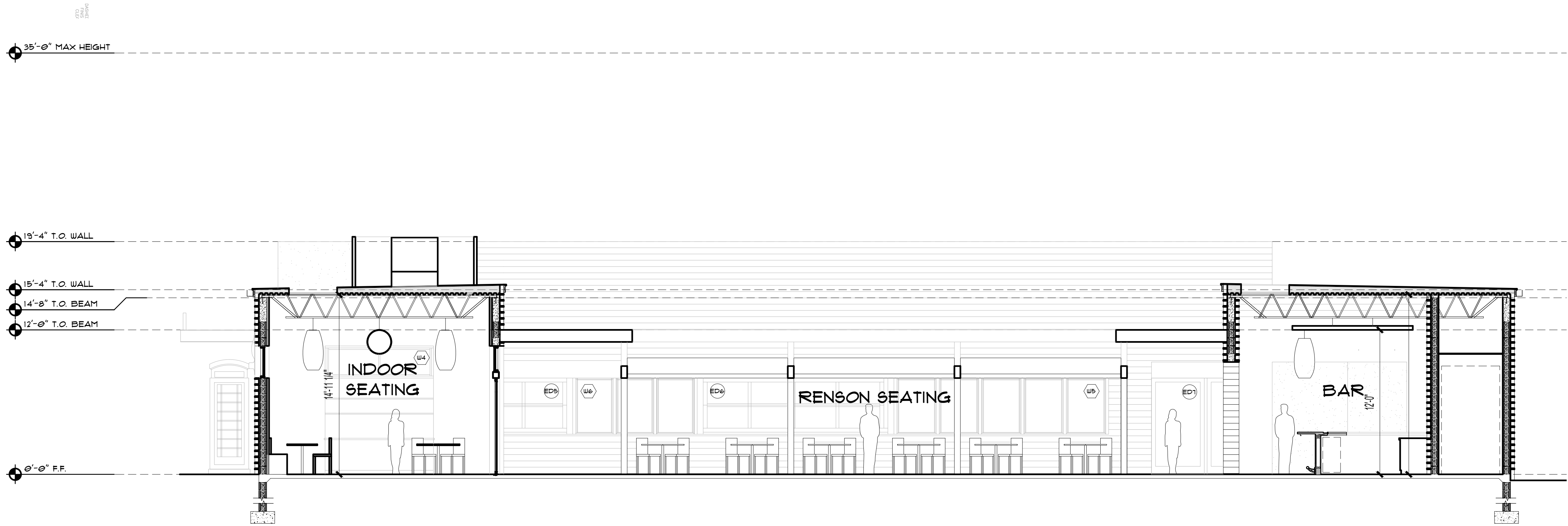




Age Group	Number of People
0-14	10
15-24	20
25-34	40
35-44	30
45-54	20
55-64	10
65-74	5
75-84	2
85-94	1
95+	0



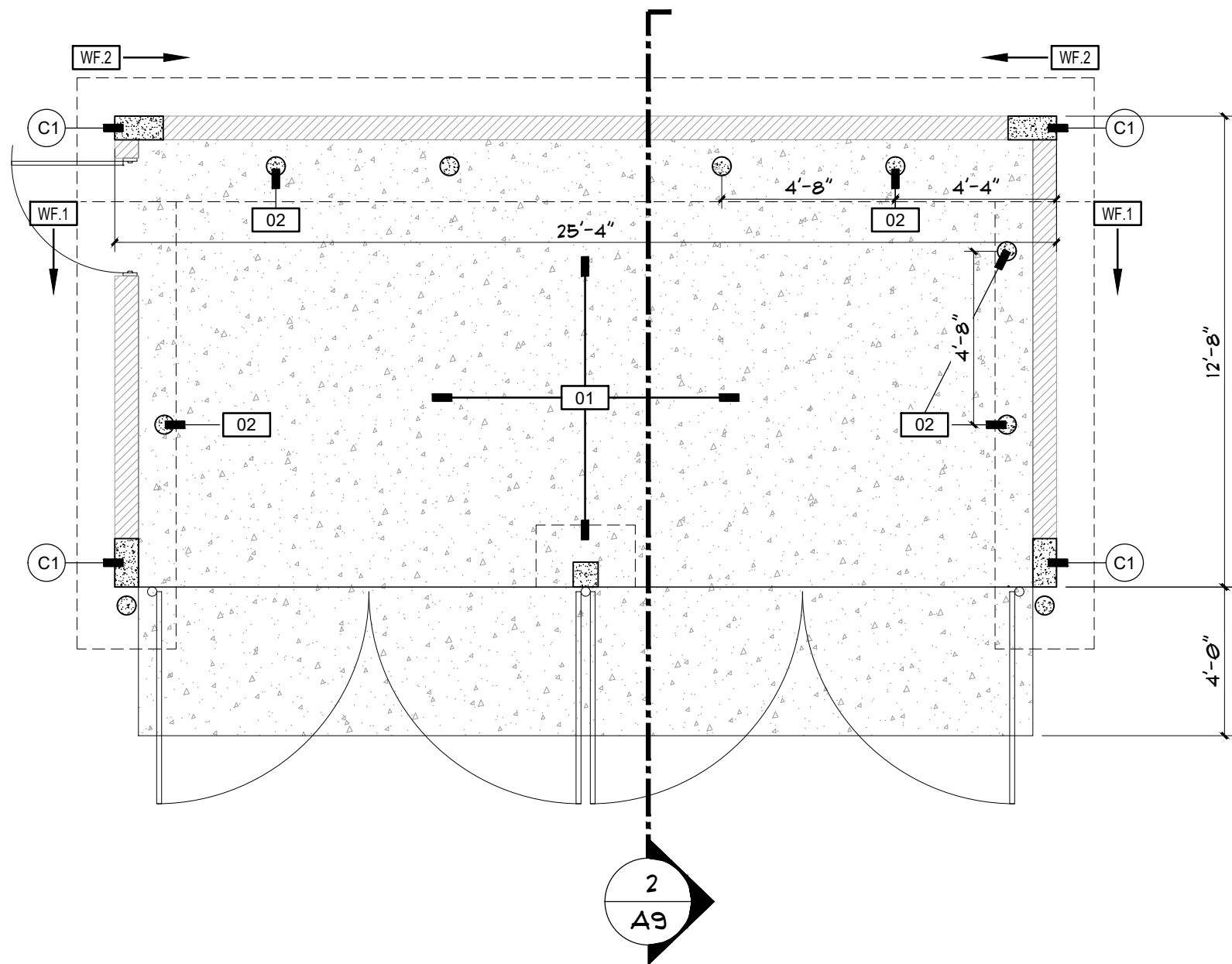
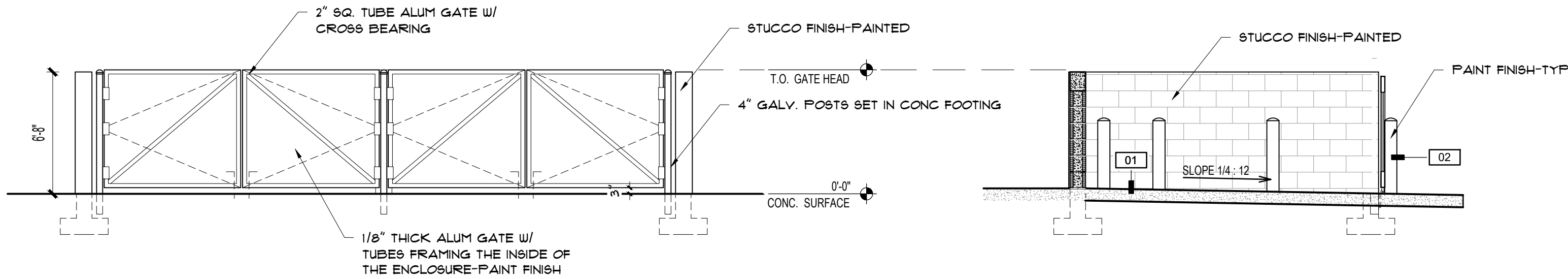
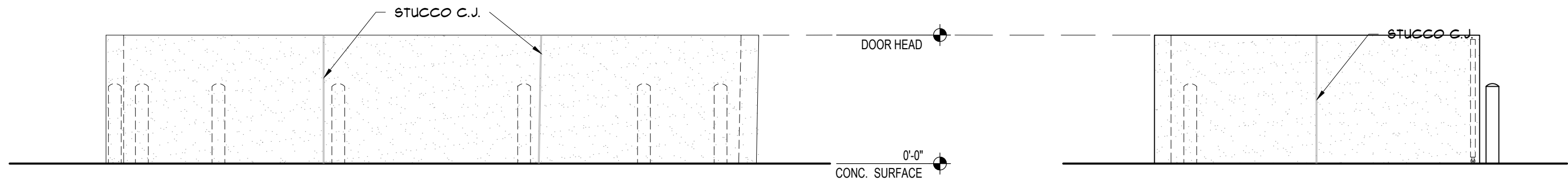




BUILDING SECTION ○

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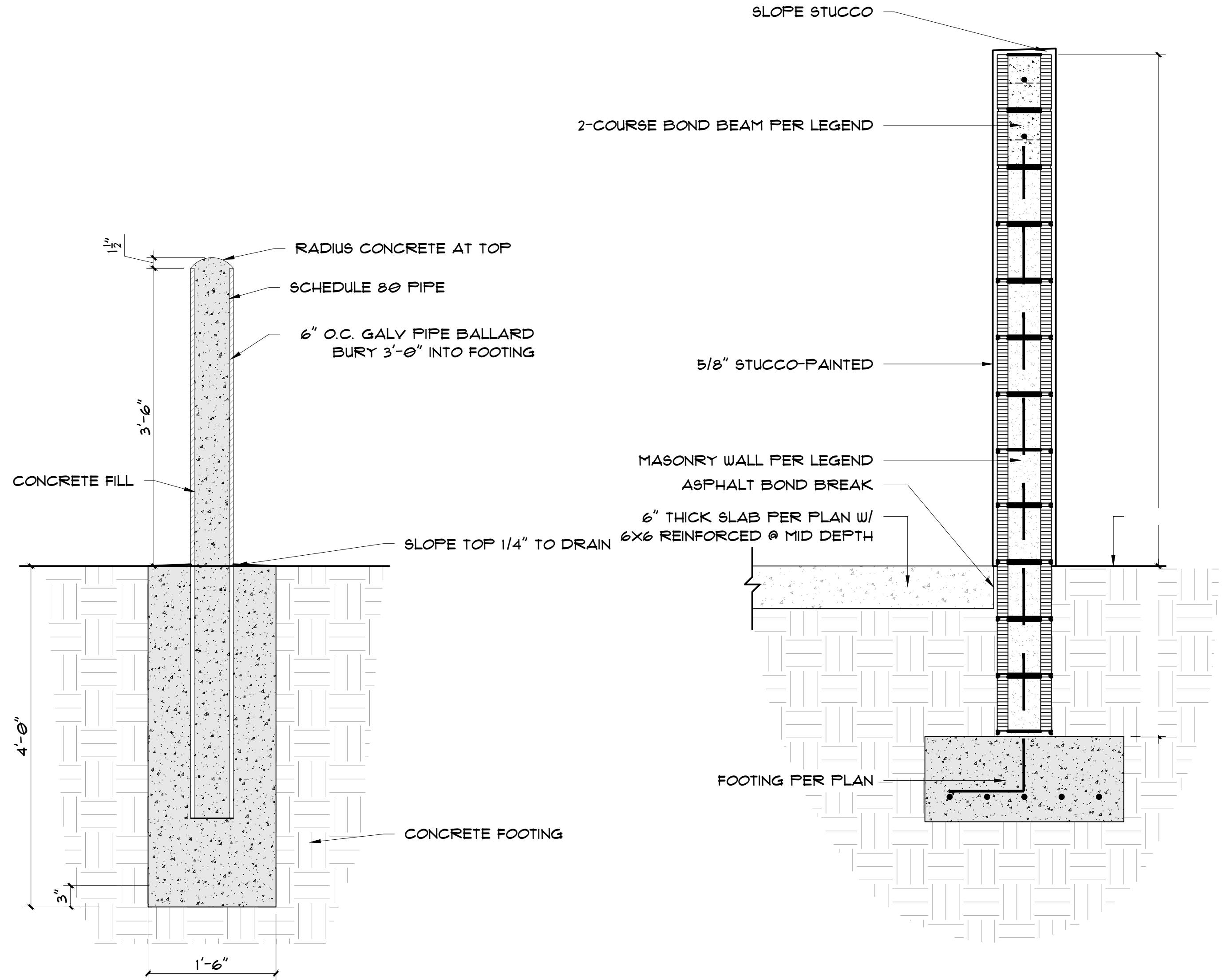
LEGEND / NOTES / SYMBOLS.

- 8" MASONRY SITE WALL: 8x16 NOMINAL MASONRY WALL VERTICAL REINFORCING #5 @ 24" O.C. - CONT. 2-COURSE BOND BEAM W/ (1) #7 IN EACH @ TOP
 - C1 8x16 C.I.P. REINFORCED CONCRETE WITH (6) #6 VERTICAL AND #3 TIES @ 8" O.C. HORIZONTAL TYP. (MIN 1/2" COVERAGE) - PILASTER
 - 01 6" THK. MIN. 3,000 P.S.I. CONCRETE SLAB W/ 6x6 #1 @ 10" W/ OR FIBERMESH REINFORCING OVER 10 MIL 'STEGO' VAPOR BARRIER ON 2,500 P.S.I. BEARING CAPACITY, CLEAN TERMITE TREATED FILL COMPACTED TO 95% PROCTOR DENSITY.
 - 02 6" Ø GALV. PIPE BOLLARD FILLED WITH CONCRETE.
 - WF 1 28" WIDE X 12" DEEP CONT. STEM WALL FOOTING W/ (5) #5 @ 12" O.C. EQUALLY SPACED AND CENTERED IN FOOTING AND #5 TRANS BARS @ 12" O.C.
 - WF 2 40" WIDE X 12" DEEP CONT. STEM WALL FOOTING W/ (6) #5 @ 12" O.C. EQUALLY SPACED AND CENTERED IN FOOTING AND #5 TRANS BARS @ 12" O.C.
- GATE HARDWARE SHALL BE HEAVY DUTY ALUM. HINGES, CANE BOLTS W/ RECEIVER TO HOLD GATES IN OPEN AND CLOSED POSITION

DUMPSTER ENCLOSURE PLAN

SCALE: 1/4" = 1'-0"

1



DUMPSTER ENCLOSURE SECTION

1

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Bonita Park Diner
 Bonita Springs, Florida
 SPE20-75174-BOS

REQUESTED MOTION: Adopt a resolution authorizing the submittal of the West Coast Inland Navigation District (WCIND) grant application for funds to promote safe navigation and water-based activities.

REQUESTOR: Carly Sanseverino, Staff Attorney

AGENDA: Consent

STRATEGIC PRIORITY: #3 Stengthen City Finances

BACKGROUND:

The West Coast Inland Navigation District (WCIND) is a multi-county special taxing district pursuant to Rule 66A-2.007, F.A.C., Funding Conditions. Lee County Natural Resources Division administers the WCIND grant fund for waterway projects that promote safe navigation and water-based activities. The WCIND (West Coast Inland Navigation District) Waterway Development Program Proposal Form for Sub-grantees is a Lee County waterway grant program provided through the Lee County Natural Resources Division, with applications solicited almost one year in advance of funding.

Eligible projects must relate directly to navigation in Lee County and must address one of the following categories: Navigation Improvements, Boating Safety, Environmental Education, Nautical Recreation, or Law Enforcement. The WCIND grant program has encouraged that the City provide a match amount equal to the amount requested. The City was awarded and is currently administrating a grant of \$40,000.00 in Fiscal Year 2021-2022 from WCIND. Additionally, the City budget provides a match in the amount of \$40,000.00 in Fiscal Year 2021-2022.

Staff requests approval of the application to WCIND with a total project cost of approximately \$80,000.00 for continued Marine Law Enforcement on Lee County waterways of the Imperial River and beach areas. The City will provide a match amount of \$40,000 with the caveat that the match funds will be available in the Fiscal Year 2022-2023 budget; if not included in the budget, the WCIND application will be withdrawn.

STAFF RECOMMENDATION: Approve

ATTACHMENTS:

1. Resolution
2. WCIND Grant Application

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; SUPPORTING THE SUBMITTAL OF A LEE COUNTY NATURAL RESOURCES DIVISION/WCIND (WEST COAST INLAND NAVIGATION DISTRICT) WATERWAY DEVELOPMENT PROGRAM PROPOSAL FORM FOR SUB-GRANTEES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the West Coast Inland Navigation District (WCIND) is a multi-county special taxing district. Lee County Natural Resources Division administers the WCIND grant fund for waterway projects that promote safe navigation and water-based activities; and

WHEREAS, the WCIND (West Coast Inland Navigation District) Waterway Development Program Proposal Form for Sub-grantees is a Lee County waterway grant program provided through the Lee County Natural Resources Division, with applications solicited almost one year in advance of funding; and

WHEREAS, the deadline for submission of grant applications is March 21, 2022; and

WHEREAS, eligible projects must relate directly to navigation in Lee County and must address one of the following categories: Navigation Improvements, Boating Safety, Environmental Education, Nautical Recreation, or Law Enforcement; and

WHEREAS, the WCIND grant program encouraged that the City provide a match amount equal to the amount requested; and

WHEREAS, staff requests approval of the application to WCIND with a total project cost of approximately \$80,000.00 for continued Marine Law Enforcement on Lee County waterways of the Imperial River and beach areas; and

WHEREAS, the City will provide a match amount of \$40,000.00 with the caveat that the match funds will be available in the FY 2022-203 budget; if not included in the budget, the WCIND application will be withdrawn;

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

Section 1. The City Manager is hereby authorized to submit a grant application to the Lee County Natural Resources Division/WCIND (West Coast Inland Navigation District) Waterway Development Program for Sub-grantees in the amount of \$40,000.00 for continued Marine Law Enforcement on Lee County waterways, with a City match of \$40,000, for a total project cost of \$80,000.

Section 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita
Springs, Lee County, Florida, this 2nd day of March, 2022.

AUTHENTICATION:

Mayor

City Clerk's Office

APPROVED AS TO FORM: _____
City Attorney's Office

Vote:

Carr	Purdon
Corrie	Quaremba
Forbes	Gibson
Steinmeyer	

Date filed with City Clerk: _____

**LEE COUNTY / WEST COAST INLAND NAVIGATION DISTRICT
FUNDING APPLICATION**

APPLICATION DATE: **March 2, 2022**

1. APPLICANT: **City of Bonita Springs**

2. PROJECT CATEGORY:

☐ Public Navigation ☒ Marine Law Enforcement ☐ Environmental Education
☐ Boater Recreation ☐ Boating Safety & Education

3. PROJECT TITLE: **Lee County Marine Law Enforcement**

4. PROJECT DESCRIPTION AND PUBLIC BENEFIT: **The City's goal is to continue the effective coordination with the Lee County Sheriff's Marine Unit. The deputies patrol and protect the people and environment on a 40 hour/week basis and also provide a boat operator for service calls outside the regular hours of detail. Other services include special support for marine-related events such as searches, public information, support for dive team and special operations units, and assistance to other agencies such as the U.S. Coast Guard, Florida Marine Patrol, and other community agencies.**

Funds provide necessary financial resources to the Lee County Sheriff's Marine Unit to continue their professional and effective efforts of local and state law enforcement. The outcomes are safer boat operation, greater resource protection, and the improved quality of boating environment in the water of Bonita Springs and Lee County.

A. PROJECT RANK IF MORE THAN ONE APPLICATION IS SUBMITTED: N/A

5. IMPLEMENTATION BY THIRD-PARTY OPERATOR (TPO)? **YES**
IF YES, PROVIDE THE FOLLOWING:

TPO NAME:	Lee County Sheriff's Office	TPO MANAGER:	Lt. Christopher Nyce
FEID:		PHONE:	(239) 540-5445
ADDRESS:	1470 Six Mile Cypress Pkwy	CITY:	Fort Myers
STATE:	Florida	ZIP:	33912



6. TYPE AND STATUS OF REQUIRED PERMITS, AUTHORIZATIONS, EASEMENTS OR LEASES NECESSARY FOR THE PROJECT:

TYPE: N/A	STATUS:

7. ESTIMATED PROJECT START DATE: **10/01/2022** COMPLETION DATE: **9/30/2023**

8. REQUIRED ATTACHMENTS:

- B. VICINITY MAP IF APPLICABLE
- C. SITE DEVELOPMENT PLAN IF APPLICABLE
- D. PERMITS IF APPLICABLE

9. WCIND FUNDS REQUESTED: _____ DOLLARS

10. COMPLETE ATTACHED BUDGET DETAIL - LIST AMOUNT(S) AND SOURCE(S) OF OTHER PROJECT FUNDS. CLEARLY IDENTIFY AND ENUMERATING THE AMOUNT AND SOURCE OF ALL MATCHING FUNDS. ACCORDING TO SECTION 374.976 F.S. AND RULE 66A-2, F.A.C., MATCHING FUNDS ARE REQUIRED FOR BOATING SAFETY AND EDUCATION, AND BOATER RECREATION PROJECTS.

11. ESTIMATED TOTAL PROJECT COST: _____ DOLLARS

12. APPLICANT IDENTIFICATION:

PROJECT MANAGER: **Carly Sanseverino**

ADDRESS: **9101 Bonita Beach Road, Bonita Springs, Florida 34135**

TELEPHONE NO.: **(239) 949-6262**

EMAIL.: **carly.sanseverino@cityofbonitasprings.org**

FEID#: _____

13. SIGNATURE: _____

14. DATE: _____



BUDGET ESTIMATE DETAIL	Grant Funds	Matching Funds ¹	Total
Construction Expenses			
(specify)			
Contractual Services	\$30,125	\$30,125	\$60,250
(specify)			
Materials			
(specify)	\$9,875	\$9,875	\$19,750
Equipment			
(specify)			
Salaries ²			
Other			
(specify)			
GRAND TOTAL	\$40,000	\$40,000	\$80,000

SOURCE(S) OF MATCHING FUNDS: FY22-23 City Budget

Additional Information: _____

¹ Matching funds are **required** only for Boating Safety and Education, and Boater Recreation projects, but are encouraged for all projects.

² Salaries are **only** eligible as a grant expense for Marine Law Enforcement projects.



REQUESTED MOTION: Authorize staff to pursue the purchase of the “Skating Banana” bronze sculpture by artist Jack Hill, as recommended by the Art in Public Places Board.

REQUESTOR: Council Member Amy Quaremba, District 1; Nicole Perino, Parks and Recreation Director

AGENDA: Consent

STRATEGIC PRIORITY: #5 Community Aesthetics

BACKGROUND:

On February 15, 2022, the Art in Public Places Board (APPB) voted to recommend the purchase of the “Skating Banana” bronze sculpture art piece by artist Jack Hill. The APPB is recommending the placement of the sculpture in the Northwest Corner of the raised platform area of the Liles Hotel Plaza adjacent to Artist Cottage #6. This would allow the sculpture to be visible to the public along Old 41 Rd, from the Imperial River, as well as during special events.

The purchase price for the artwork is \$40,000 and funding is available in the Acquisition of Public Art line item (GL: 00.270.573.4928). If approved, staff will prepare a standard public art agreement for the City Manager’s signature.

STAFF RECOMMENDATION: Approve.

ATTACHMENTS:

1. Photographs of “Skating Banana” Bronze Sculpture
-

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other_____





REQUESTED MOTION: Approve modification #3 to the contract agreement between the City of Bonita Springs and Florida Department of Emergency Management for the Logan Boulevard Floodway Improvement Project, Phase 1 (4337-265-R).

REQUESTOR: Elly Soto McKuen, Senior Project Manager

AGENDA: Consent

STRATEGIC PRIORITY: 1) Stormwater Management, 3) Strengthen City Finances, 4) Environmental Protection

BACKGROUND: The original contract between the City of Bonita Springs and Florida Department of Emergency Management (FDEM) for the Logan Boulevard Floodway Improvement Project, Phase 1 was executed on January 13, 2020. During the formulation of the grant agreement, staff was directed to include program management as part of the funded award awarded for the project. The FDEM is a pass-through Division that implements the FEMA sponsored Hazard Mitigation Grant Program (HMGP).

During the February 3, 2021, City Council meeting, modification #1 was approved allowing for a time extension to September 30, 2021.

At the August 4, 2021, City Council meeting, modification #2 was approved allowing for Sub Recipient Management Costs (SRMC) and allowing for a time extension to March 31, 2022.

Modification #3 allows for a one-year time extension to March 31, 2023.

STAFF RECOMMENDATION: Approve contract modification #3.

ATTACHMENTS:

1. 4337-265-R Logan Boulevard Floodway Improvement Project, Phase 1 Modification #3
 2. Original Contract with Modification 1 and 2
-

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Bonita Springs
PROJECT #:	4337-265-R
PROJECT TITLE:	City of Bonita Springs, Logan Blvd. Regional Floodway, Drainage – Phase I
CONTRACT #:	H0338
MODIFICATION #:	3

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Matt Feeney, Public Works Director 9101 Bonita Beach Road Bonita Springs, FL 34135

Enclosed is your copy of the proposed contract/modification between **City of Bonita Springs** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
☐	This form is required to be included with all Reviews, Approvals, and Submittal
☐	Signed electronic copy
☐	Reviewed and Approved
☐	Signed and Dated by Official Representative
☐	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
☐	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) - completed, signed, and dated ☒ N/A for Modifications or State Funded Agreements
☐	Attachment K – Certification Regarding Lobbying - completed, signed, and dated ☒ N/A for Modifications or State Funded Agreements
☐	Electronic Submittal to the Grant Specialist Jenna Hayth on

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 692-9812 or email me at Suzi.Boydston@em.myflorida.com.

Contract Number: H0338
Project Number: 4337-265-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF BONITA SPRINGS**

This Modification Number Three made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0338, dated, January 13, 2020 ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$168,000.00, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on March 31, 2022; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

(8) PERIOD OF AGREEMENT

This Agreement shall begin January 13, 2020 and shall end March 31, 2023, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 3rd Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: _____

Name and Title: _____

Date: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Kevin Guthrie, Director

Date: _____

Attachment A
(3rd Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the subdivisions of Palmira Golf Club and Village Walk in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-265-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, located in Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

The scope of work is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax

receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans / bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.
- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.
- h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.

- i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Sub-Recipient Management Costs (SRMC) expenditure must adhere to FEMA Policy #104-11-1 HMGP Management Costs (Interim) signed November 14, 2018. FEMA defines management costs as any: Indirect costs, Direct administrative costs, and other administrative expenses associated with a specific project. Administrative costs are expenses incurred by a Sub-Recipient in managing and administering the federal award to ensure that federal, state requirements are met including: solicitation, development, review, and processing of sub-applications; delivery of technical assistance; quarterly progress and fiscal reporting; project monitoring; technical monitoring; compliance activities associated with federal procurement requirements; documentation of quality of work verification for quarterly reports and closeout; payment of claims; closeout review and liquidation; and records retention.

Any activities that are directly related to a project are not eligible under management costs. For example, architectural, engineering, and design services are project costs and cannot be included under management costs. Similarly, construction management activities that manage, coordinate, and supervise the construction process from project scoping to project completion are project costs. These activities cannot be included under management costs.

Due to Strategic Funds Management (SFM), SRMC Interim Policy requires management costs to be obligated in increments sufficient to cover Sub-Recipient needs, for no more than one year, unless contractual agreements require additional funding. FEMA has established a threshold where annual increments will be applied to larger awards allowing smaller awards to be fully obligated. Obligations will be handled by the size of the total subaward.

The Sub-Recipient shall pre-audit all SRMC source documentation – personnel, fringe benefits, travel, equipment, supplies, contractual, and indirect costs. A brief narrative is required to identify what the funds will be used for. Documentation shall be detailed and clearly describe each approved task performed, hours devoted to each task, and the hourly rate charged including enough information to calculate the hourly rates based on payroll

records. Employee benefits and tasks shall be clearly shown on the Personnel Activity Form, and all Personnel or Contractual SRMC shall be invoiced separate from all other project costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.

- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.
- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 10) Sub-Recipient Management Costs (SRMC), implemented under the Disaster Relief and Recovery Act of 2018 (DRRA), amended Section 324 of the Stafford Act, and the Hazard Mitigation Grant Program Management Costs (Interim) FEMA Policy 104-11-1, provides 100% federal funding under HMGP to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner.
 - a) SRMC must conform to 2 CFR Part 200, Subpart E, applicable program regulations, and Hazard Mitigation Assistance (HMA) Guidance (2015), ensuring costs are reasonable, allowable, allocable and necessary to the overall project.
 - b) Funding is for approved indirect costs, direct administrative costs, and administrative expenses associated with this specific project and shall have adequate documentation.

- c) SRMC cannot exceed 5% of the total project costs awarded.
- d) SRMC is 100% federally funded and will be reimbursed based on actual costs incurred for each individual Request for Reimbursement (RFR) submitted with the required documentation.
- e) SRMC shall be reconciled against actual costs on a quarterly basis and annual basis.
- f) If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

This is FEMA project number **4337-265-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 13, 2020; and the Period of Performance for this project shall end on **March 31, 2023**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State Contracting:	8 Months
Bidding / Local Procurement:	7 Months
Design Specifications:	8 Months
Permitting / Survey:	9 Months
Deliverables Submitted to FDEM:	9 Months
Total Period of Performance:	41 Months

BUDGET**Line Item Budget***

Phase I	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$210,000.00	\$157,500.00	\$52,500.00
Initial Agreement Amount:	\$210,000.00	\$157,500.00	\$52,500.00
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$210,000.00	\$157,500.00	\$52,500.00
****SRMC			
SRMC:	\$10,500.00	\$10,500.00	
SRMC-Pre-Award:	\$0.00	\$0.00	
SRMC Total:	\$10,500.00	\$10,500.00	

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$0.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

***** Sub-Recipient Management Costs (SRMC) are included for this project in the amount of \$10,500.00 in Federal funding. Per the Hazard Mitigation Grant Program Interim FEMA Policy 104-11-1, SRMC provides HMGP funding to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner. SRMC must conform to 2 CFR Part 200, Subpart E, ensuring costs are reasonable, allowable, allocable and necessary to the overall project.*

SRMC cannot exceed 5% of the approved total project costs awarded and shall be reimbursed at 5% for each Request for Reimbursement (RFR) submitted with the required documentation.

If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

Funding Summary Totals

Federal Share:	\$157,500.00	(75.00%)
Non-Federal Share:	\$52,500.00	(25.00%)
Total Project Cost:	\$210,000.00	(100.00%)
SRMC (100% Federal)	\$10,500.00	



STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Jared Moskowitz
Director

January 10, 2020

Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**Re: Project #: 4337-265-R, City of Bonita Springs, Logan Blvd Regional
Floodway, Drainage, Phase I**

Dear Matt Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract number H0338 between the City of Bonita Springs and the Division of Emergency Management.

Please forward all Requests for Reimbursement (Attachment D) to the Division of Emergency Management at the following address:

Mike Lalbachan, Project Manager
Florida Division of Emergency Management
2702 Directors Row
Orlando, Florida 32809

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Mike Lalbachan at (850) 815-4571.

Respectfully,

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

JAN 17 2020 PM 2:06

MEA: km/a
Enclosure

Agreement Number: H0338
Project Number: 4337-265-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a "subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract."

As defined by 2 C.F.R. §200.74, "pass-through entity" means "a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program."

As defined by 2 C.F.R. §200.93, "Sub-Recipient" means "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program."

As defined by 2 C.F.R. §200.38, "Federal award" means "Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity."

As defined by 2 C.F.R. §200.92, "subaward" means "an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity."

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	<u>City of Bonita Springs</u>
Sub-Recipient's unique entity identifier:	<u>593649914</u>
Federal Award Identification Number (FAIN):	<u>FEMA-DR-4337-FL</u>
Federal Award Date:	<u>August 23, 2019</u>
Subaward Period of Performance Start and End Date:	<u>Upon execution through December 31, 2020</u>
Amount of Federal Funds Obligated by this Agreement:	<u>\$163,125.00</u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u>\$163,125.00</u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	<u>\$163,125.00</u>
Federal award project description (see FFATA):	<u>Drainage</u>
Name of Federal awarding agency:	<u>Federal Emergency Management Agency</u>
Name of pass-through entity:	<u>FL Division of Emergency Management</u>
Contact information for the pass-through entity:	<u>Mike.Lalbachan@em.myflorida.com</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.039 Hazard Mitigation Grant Program</u>
Whether the award is R&D:	<u>N/A</u>
Indirect cost rate for the Federal award:	<u>N/A</u>

SUB-RECIPIENT AGREEMENT CHECKLIST

DIVISION OF EMERGENCY MANAGEMENT MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL

SUB-RECIPIENT: City of Bonita Springs
PROJECT #: 4337-265-R
PROJECT TITLE: City of Bonita Springs, Logan Blvd Regional Floodway, Drainage, Phase I
CONTRACT #: H0338
MODIFICATION #: N/A

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)

Matt Feeney, Public Works Director, City of Bonita Springs

Enclosed is your copy of the proposed contract/modification between **City of Bonita Springs** and the Florida Division of Emergency Management (FDEM).

COMPLETE

- ☐ This form is required to be included with all Reviews, Approvals, and Submittal
- ☐ Two (2) Copies printed for Approval
- ☐ Printed Single-sided (*If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature*)
- ☐ Reviewed and Approved
- ☐ Signed and Dated by Official Representative (*blue ink*)
- ☐ **Copy of the organization's resolution or charter** that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
- ☐ Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (☐ N/A for Modifications)
- ☐ Two Signed and dated Originals mailed to FDEM - Tallahassee

Florida Division of Emergency Management
Mitigation Bureau – HMGP
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Attention – Grant Specialist –Brianna Nelson

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4571 or email me at Mike.Lalbachan@em.myflorida.com.

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **City of Bonita Springs**, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Mike Lalbachan
Project Manager
Florida Division of Emergency Management
2702 Directors Row
Orlando, FL 32809
Telephone: (850) 815-4571
Email: Mike.Lalbachan@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135
Telephone: (239) 949-6246
Email: matt.feeney@cityofbonitasprings.org

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

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

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on **December 31, 2020**, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$163,125.00**.
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10)RECORDS

- a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.
- b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.
- c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

- i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.
 - iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.
 - v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
- d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.
- e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.
- f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.
- g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(11)AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient's fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15)DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17)TERMINATION

a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division's review and comments shall not constitute an approval of the solicitation. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. "[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

- c. This Agreement has the following attachments:
- i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions

(20)PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22)MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in

excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

I. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

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

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

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

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

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

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

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26)EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

v. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vi. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared

ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(32)CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33)ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: City of Bonita Springs

By: 

Name and Title: PETER SIMMONS / MAYOR

Date: DECEMBER 20, 2019

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: 

Miles E. Anderson, for

Name and Title: Jared Moskowitz, Director

Date: 1-13-2020

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: \$163,125.00

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Intermediate Stormwater Drainage System
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the subdivisions of Palmira Golf Club and Village Walk in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) DR-4337-265-R, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage in the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

Specifically, the project is in the eastern boundary of Radio Tower Boulevard under Bonita Road and along Logan Boulevard to East/West spreader swale.

The scope is for Phase I only; which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposal is to improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method

of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
 - b) Construction Plans and bid documents.
 - c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
 - d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
 - e) Color maps including topographical, aerial, and ground disturbance.
 - f) Color photographs of the project area and areas of ground disturbance.
 - g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.
 - h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage in the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida, 34135.

The designed project shall provide protection against a 100-year storm event.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.

- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 5) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 6) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 7) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

This is FEMA project number **4337-265-R**. It is funded under HMGP, FEMA-Irma-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **December 31, 2020**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State & Local Contracting:	3 Months
H & H Study:	3 Months
Engineering Design Specifications:	6 Months
Permitting / Survey:	3 Months
Deliverables Submitted for Phase II Review:	1 Month
Total Period of Performance:	16 Months

BUDGET**Line Item Budget***

	Project Cost	Federal Share	Non-Federal Share
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$217,500.00	\$163,125.00	\$54,375.00
Initial Agreement Amount:	\$217,500.00	\$163,125.00	\$54,375.00
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$217,500.00	\$163,125.00	\$54,375.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$0.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

Funding Summary

Federal Share:	\$163,125.00	(75%)
Non-Federal Share:	\$54,375.00	(25%)
Total Project Cost:	\$217,500.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmenta/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the **“Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)”** which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

REQUEST FOR ADVANCE OR REIMBURSEMENT OF
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDSSUB-RECIPIENT: City of Bonita Springs

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Intermediate Stormwater
Drainage System PROJECT #: 4337-265-RPROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0338

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount <u>75 %</u>	Obligated Non- Federal <u>25 %</u>	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	\$ _____
ADMINISTRATIVE COST	\$ _____
APPROVED FOR PAYMENT	\$ _____
GOVERNOR'S AUTHORIZED REPRESENTATIVE _____	
DATE _____	

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MITIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: City of Bonita Springs PAYMENT #: _____
 PROJECT TYPE: Intermediate Stormwater Drainage System PROJECT #: 4337-265-R
 PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0338

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
This payment represents % completion of the project.				TOTAL	

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

Attachment E
JUSTIFICATION OF ADVANCE PAYMENT

SUB-RECIPIENT: City of Bonita Springs

If you are requesting an advance, indicate same by checking the box below.

☐ ADVANCE REQUESTED

Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: City of Bonita Springs PROJECT #: 4337-265-R
Intermediate Stormwater Drainage
PROJECT TYPE: System CONTRACT #: H0338
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: \$ _____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20__ \$ _____ Oct-Dec 20__ \$ _____ Jan-Mar 20__ \$ _____ Apr-Jun 20__ \$ _____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under **Issues** below*)

Percentage of Work Completed (*may be confirmed by state inspectors*): _____ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments/Elaboration:**

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form:

Phone:

~ To be completed by Division staff ~

Date Reviewed: _____ Reviewer: _____

Actions:

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

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

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____,
of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is
presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded
from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective
subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

City of Bonita Springs
Sub-Recipient's Name

H0338
DEM Contract Number

4337-265-R
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-265-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$163,125.00

OBLIGATION/ACTION DATE: August 23, 2019

SUBAWARD DATE (if applicable): _____

DUNS#: 196164110

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: City of Bonita Springs
DBA NAME (IF APPLICABLE): City of Bonita Springs
PRINCIPAL PLACE OF BUSINESS ADDRESS:
ADDRESS LINE 1: 9101 Bonita Beach Road
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY Bonita Springs STATE FL ZIP CODE+4** 34135-4215

PARENT COMPANY DUNS# (if applicable): _____
CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage in the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

Specifically, the project is in the eastern boundary of Radio Tower Boulevard under Bonita Road and along Logan Boulevard to East/West spreader swale.

The scope is for Phase I only; which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposal is to improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE: 19-34135-4215

****Providing the Zip+4 ensures that the correct Congressional District is reported.**

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☒

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.

- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: Peter Simmons, Mayor

DATE: DECEMBER 20, 2019

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3149) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689).—A contract award (see 2 CFR 189.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 189 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See §200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHEs)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution:

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section: indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.498 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Bonita Springs
PROJECT #:	4337-265-R
PROJECT TITLE:	City of Bonita Springs, Logan Blvd Regional Floodway, Drainage, Phase I
CONTRACT #:	H0338
MODIFICATION #:	N/A

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Matt Feeney, Public Works Director, City of Bonita Springs

Enclosed is your copy of the proposed contract/modification between **City of Bonita Springs** and the Florida Division of Emergency Management (FDEM).

COMPLETE	
☒	This form is required to be included with all Reviews, Approvals, and Submittal
☒	Two (2) Copies printed for Approval
☒	Printed Single-sided <i>(If your policy is to copy two-sided please contact me and I will send you two original one-sided copies for signature)</i>
☒	Reviewed and Approved
☒	Signed and Dated by Official Representative <i>(blue ink)</i>
☐ N/A	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, Chief
☒	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated (☐ N/A for Modifications)
☒	Two Signed and dated Originals mailed to FDEM - Tallahassee Florida Division of Emergency Management Mitigation Bureau – HMGP 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100 Attention – Grant Specialist –Brianna Nelson

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 815-4571 or email me at Mike.Lalbachan@em.myflorida.com.



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Jared Moskowitz
Director

March 15, 2021

Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**Re: Project Number: 4337-265-R – Modification One, City of Bonita Springs,
Logan Boulevard Regional Floodway, Drainage, Phase 1**

Dear Mr. Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract modification number one (Contract #H0338) between City of Bonita Springs and the Division of Emergency Management.

Please email all Requests for Reimbursement (Attachment D) to the project manager at Liliana.Hernandez@em.myflorida.com. The Project Manager for this contract is:

Liliana Hernandez, Project Manager
Florida Division of Emergency Management
2702 Directors Row
Orlando, Florida 32809

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Liliana Hernandez at (850) 692-9828

Respectfully,

Miles E. Anderson

Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.03.16 17:20:39 -04'00'

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

Enclosure

Contract Number: H0338
Project Number: 4337-265-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF BONITA SPRINGS**

This Modification Number One made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and the City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0338, dated, January 13, 2020 ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$163,125.00, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on December 31, 2020; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

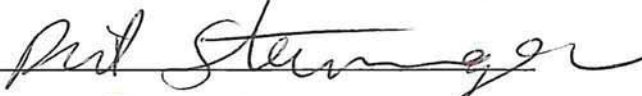
(8) PERIOD OF AGREEMENT

This Agreement shall begin January 13, 2020 and shall end September 30, 2021, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 1st Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: 

Name and Title: Rick Stemme, mayor

Date: 2/3/2021

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: Miles E. Anderson

Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.03.16 17:21:08 -04'00'

Name and Title: Jared Moskowitz, Director

Date: 03/16/2021

Attachment A
(1st Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the subdivisions of Palmira Golf Club and Village Walk in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-265-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, located in Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

Specifically, the project is in the eastern boundary of Radio Tower Boulevard under Bonita Road and along Logan Boulevard to an East/West spreader swale.

The scope is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and

presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans and bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.
- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management

District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.

- h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new

schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.

- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

This is FEMA project number **4337-265-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 13, 2020; and the Period of Performance for this project shall end on **September 30, 2021**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State/Local Contracting:	1 Month
H&H Study:	3 Months
Engineering Design Specifications:	8 Months
Permitting / Survey:	7 Months
Deliverables Submitted to FDEM:	5 Months
Total Period of Performance:	24 Months

BUDGET

Line Item Budget*

	<u>Project Cost</u>	<u>Federal Share</u>	<u>Non-Federal Share</u>
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$217,500.00	\$163,125.00	\$54,375.00
Initial Agreement Amount:	\$217,500.00	\$163,125.00	\$54,375.00
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$217,500.00	\$163,125.00	\$54,375.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

***** This project has an estimated \$0.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$0.00

Funding Summary

Federal Share:	\$163,125.00	(75%)
Non-Federal Share:	\$54,375.00	(25%)
Total Project Cost:	\$217,500.00	(100.00%)



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Kevin Guthrie
Director

August 30, 2021

Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**Re: Project Number: 4337-265-R – Modification #2, City of Bonita Springs,
Logan Boulevard Regional Floodway, Drainage, Phase 1**

Dear Mr. Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract modification number two (Contract #H0338) between the City of Bonita Springs and the Division of Emergency Management.

Please email all Requests for Reimbursement (Attachment D) to the project manager at Liliana.Hernandez@em.myflorida.com. The Project Manager for this contract is:

Liliana Hernandez, Project Manager
Florida Division of Emergency Management
2702 Directors Row
Orlando, Florida 32809

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Liliana Hernandez at (850) 692-9828.

Respectfully,

Miles E. Anderson

Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.09.01 09:26:11 -04'00'

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

Enclosure

Contract Number: H0338

Project Number: 4337-265-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF BONITA SPRINGS**

This Modification Number Two made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0338, dated January 13, 2020, ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$163,125.00, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement shall expire on September 30, 2021; and

WHEREAS, the Division and the Sub-Recipient desire to extend the terms of the Agreement and increase the Federal Funding under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is amended to increase the Federal Funding by \$4,875.00, for the maximum amount payable under the Agreement to \$168,000.00, (One Hundred Sixty-Eight Thousand Dollars and No Cents).
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

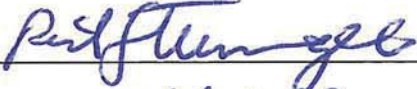
(8) PERIOD OF AGREEMENT

This Agreement shall begin January 13, 2020 and shall end March 31, 2022, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 2nd Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: 

Name and Title: MAY JR

Date: 8-4-21

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: Miles E. Anderson
Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.09.01 09:26:31 -04'00'

Name and Title: Kevin Guthrie, Director

Date: 09/01/2021

Attachment A
(2nd Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the subdivisions of Palmira Golf Club and Village Walk in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-265-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, located in Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

Specifically, the project is in the eastern boundary of Radio Tower Boulevard under Bonita Road and along Logan Boulevard to an East/West spreader swale.

The scope is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and

presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans and bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.
- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management

District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.

- h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Sub-Recipient Management Costs (SRMC): The Sub-Recipient shall pre-audit source documentation – personnel, fringe benefits, travel, equipment, supplies, contractual, and indirect costs. A brief narrative is required to identify what the funds will be used for. Documentation shall be detailed and clearly describe each approved task performed, hours devoted to each task, and the hourly rate charged including enough information to calculate the hourly rates based on payroll records. Employee benefits and tasks shall be clearly shown on the Personnel Activity Form.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.

- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 10) Sub-Recipient Management Costs (SRMC), implemented under the Disaster Relief and Recovery Act of 2018 (DRRA), amended Section 324 of the Stafford Act, and the Hazard Mitigation Grant Program Management Costs (Interim) FEMA Policy 104-11-1, provides 100% federal funding under HMGP to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner.
 - a) SRMC must conform to 2 CFR Part 200, Subpart E, applicable program regulations, and Hazard Mitigation Assistance (HMA) Guidance (2015), ensuring costs are reasonable, allowable, allocable and necessary to the overall project.
 - b) Funding is for approved indirect costs, direct administrative costs, and administrative expenses associated with this specific project and shall have adequate documentation.
 - c) SRMC cannot exceed 5% of the total project costs awarded.
 - d) SRMC is 100% federally funded and will be reimbursed based on actual costs incurred for each individual Request for Reimbursement (RFR) submitted with the required documentation.
 - e) SRMC shall be reconciled against actual costs on a quarterly basis and annual basis.
 - f) If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

This is FEMA project number **4337-265-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 13, 2020; and the Period of Performance for this project shall end on **March 31, 2022**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State Contracting:	9 Months
Bidding / Local Procurement:	3 Months
Design Specifications:	8 Months
Permitting / Survey:	6 Months
Deliverables Submitted to FDEM:	5 Months
Total Period of Performance:	31 Months

BUDGET

Line Item Budget*

Phase I	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$210,000.00	\$157,500.00	\$52,500.00
Initial Agreement Amount:	\$210,000.00	\$157,500.00	\$52,500.00
***Contingency Funds:	\$0.00	\$0.00	\$0.00
Project Total:	\$210,000.00	\$157,500.00	\$52,500.00
****SRMC			
SRMC:	\$10,500.00	\$10,500.00	
SRMC-Pre-Award:	\$0.00	\$0.00	
SRMC Total:	\$10,500.00	\$10,500.00	

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

***** This project has an estimated \$0.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the

project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$0.00

****** Sub-Recipient Management Costs (SRMC) are included for this project in the amount of \$10,500.00 in Federal funding.** Per the Hazard Mitigation Grant Program Interim FEMA Policy 104-11-1, SRMC provides HMGP funding to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner. SRMC must conform to 2 CFR Part 200, Subpart E, ensuring costs are reasonable, allowable, allocable and necessary to the overall project.

SRMC cannot exceed 5% of the approved total project costs awarded and shall be reimbursed at 5% for each Request for Reimbursement (RFR) submitted with the required documentation.

If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

Funding Summary Totals

Federal Share:	\$157,500.00	75.00%)
Non-Federal Share:	\$52,500.00	25.00%)
Total Project Cost:	\$210,000.00	100.00%)
SRMC (100% Federal)	\$10,500.00	

REQUESTED MOTION: Approve modification #3 to the contract agreement between the City of Bonita Springs and Florida Department of Emergency Management for the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1 (4337-271-R).

REQUESTOR: Elly Soto McKuen, Senior Project Manager

AGENDA: Consent

STRATEGIC PRIORITY: 1) Stormwater Management, 3) Strengthen City Finances, 4) Environmental Protection

BACKGROUND: The original contract between the City of Bonita Springs and Florida Department of Emergency Management (FDEM) for the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1 was executed on January 17, 2020. During the formulation of the grant agreement staff was directed to include program management as part of the funded award awarded for the project. The FDEM is a pass-through Division that implements the FEMA sponsored Hazard Mitigation Grant Program (HMGP).

During the March 3, 2021, City Council meeting, modification #1 was approved allowing for a time extension to September 30, 2021.

At the September 29, 2021, City Council meeting, modification #2 was approved allowing for Sub Recipient Management Costs (SRMC) and allowing for a time extension to March 31, 2022.

The attached contract modification #3 provides a time extension until March 31, 2023.

STAFF RECOMMENDATION: Approve modification #3

ATTACHMENTS:

1. 4337-271-R Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1 – Modification #3
 2. Original Contract with Modification 1 and 2
-

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Bonita Springs
PROJECT #:	4337-271-R
PROJECT TITLE:	City of Bonita Springs, Springs Creek/Bonita Springs Golf Course, Flood Improvement
CONTRACT #:	H0340
MODIFICATION #:	3

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Matt Feeney, Public Works Director 9101 Bonita Beach Road Bonita Springs, FL 34135

Enclosed is your copy of the proposed contract/modification between **City of Bonita Springs** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
☐	This form is required to be included with all Reviews, Approvals, and Submittal
☐	Signed electronic copy
☐	Reviewed and Approved
☐	Signed and Dated by Official Representative
☐	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
☐	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) - completed, signed, and dated ☒ N/A for Modifications or State Funded Agreements
☐	Attachment K – Certification Regarding Lobbying - completed, signed, and dated ☒ N/A for Modifications or State Funded Agreements
☐	Electronic Submittal to the Grant Specialist Jenna Hayth on

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 692-9812 or email me at Suzi.Boydston@em.myflorida.com.

Contract Number: H0340
Project Number: 4337-271-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF BONITA SPRINGS**

This Modification Number Three made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0340, dated, January 17, 2020 ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$204,612.50, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on March 31, 2022; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

(8) PERIOD OF AGREEMENT

This Agreement shall begin January 17, 2020 and shall end March 31, 2023, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 3rd Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By:_____

Name and Title: _____

Date: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By:_____

Name and Title: Kevin Guthrie, Director

Date: _____

Attachment A
(3rd Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage of Bonita Springs Golf Course area in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-271-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of a flow away system in the Bonita Springs Golf Course area located in Bonita Springs, Florida, 34135. Approximately, the project area covers from the North-East close to the intersection of Wild Turkey Avenue and St Patrick Lane, to the South-West near to Shangrilla Road and Cockleshell Drive. Coordinates (26.379030, -81.783310).

The scope of work is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall include acquiring land, up-size culvert, and construction of roadway, drainage system ditches, swales, canals, berms, filter marshes, flow control structures, and overland flow ways. The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or

suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans / bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.
- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.

- h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Sub-Recipient Management Costs (SRMC) expenditure must adhere to FEMA Policy #104-11-1 HMGP Management Costs (Interim) signed November 14, 2018. FEMA defines management costs as any: Indirect costs, Direct administrative costs, and other administrative expenses associated with a specific project. Administrative costs are expenses incurred by a Sub-Recipient in managing and administering the federal award to ensure that federal, state requirements are met including: solicitation, development, review, and processing of sub-applications; delivery of technical assistance; quarterly progress and fiscal reporting; project monitoring; technical monitoring; compliance activities associated with federal procurement requirements; documentation of quality of work verification for quarterly reports and closeout; payment of claims; closeout review and liquidation; and records retention.

Any activities that are directly related to a project are not eligible under management costs. For example, architectural, engineering, and design services are project costs and cannot be included under management costs. Similarly, construction management activities that manage, coordinate, and supervise the construction process from project scoping to project completion are project costs. These activities cannot be included under management costs.

Due to Strategic Funds Management (SFM), SRMC Interim Policy requires management costs to be obligated in increments sufficient to cover Sub-Recipient needs, for no more than one year, unless contractual agreements require additional funding. FEMA has established a threshold where annual increments will be applied to larger awards allowing smaller awards to be fully obligated. Obligations will be handled by the size of the total subaward.

The Sub-Recipient shall pre-audit all SRMC source documentation – personnel, fringe benefits, travel, equipment, supplies, contractual, and indirect costs. A brief narrative is

required to identify what the funds will be used for. Documentation shall be detailed and clearly describe each approved task performed, hours devoted to each task, and the hourly rate charged including enough information to calculate the hourly rates based on payroll records. Employee benefits and tasks shall be clearly shown on the Personnel Activity Form, and all Personnel or Contractual SRMC shall be invoiced separate from all other project costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.

- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.
- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 10) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.
- 11) Sub-Recipient Management Costs (SRMC), implemented under the Disaster Relief and Recovery Act of 2018 (DRRA), amended Section 324 of the Stafford Act, and the Hazard Mitigation Grant Program Management Costs (Interim) FEMA Policy 104-11-1, provides

100% federal funding under HMGP to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner.

- a) SRMC must conform to 2 CFR Part 200, Subpart E, applicable program regulations, and Hazard Mitigation Assistance (HMA) Guidance (2015), ensuring costs are reasonable, allowable, allocable and necessary to the overall project.
- b) Funding is for approved indirect costs, direct administrative costs, and administrative expenses associated with this specific project and shall have adequate documentation.
- c) SRMC cannot exceed 5% of the total project costs awarded.
- d) SRMC is 100% federally funded and will be reimbursed based on actual costs incurred for each individual Request for Reimbursement (RFR) submitted with the required documentation.
- e) SRMC shall be reconciled against actual costs on a quarterly basis and annual basis.
- f) If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

This is FEMA project number **4337-271-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 17, 2020 and the Period of Performance for this project shall end on **March 31, 2023**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State Contracting:	8 Months
Bidding / Local Procurement:	7 Months
Design Specifications:	8 Months
Permitting / Survey:	9 Months
Deliverables Submitted to FDEM:	9 Months

Total Period of Performance:	41 Months
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BUDGET

Line Item Budget*

Phase I	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$255,000.00	\$191,250.00	\$63,750.00
Initial Agreement Amount:	\$255,000.00	\$191,250.00	\$63,750.00
***Contingency Funds:	\$12,250.00	\$9,187.50	\$3,062.50
Project Total:	\$267,250.00	\$200,437.50	\$66,812.50
****SRMC			
SRMC:	\$13,362.50	\$13,362.50	
SRMC-Pre-Award:	\$0.00	\$0.00	
SRMC Total:	\$13,362.50	\$13,362.50	

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$12,250.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

***** Sub-Recipient Management Costs (SRMC) are included for this project in the amount of \$13,362.50 in Federal funding. Per the Hazard Mitigation Grant Program Interim FEMA Policy 104-11-1, SRMC provides HMGP funding to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner. SRMC must conform to 2 CFR Part 200, Subpart E, ensuring costs are reasonable, allowable, allocable and necessary to the overall project.*

SRMC cannot exceed 5% of the approved total project costs awarded and shall be reimbursed at 5% for each Request for Reimbursement (RFR) submitted with the required documentation.

If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout

Funding Summary Totals

Federal Share:	\$200,437.50	(75.00%)
Non-Federal Share:	\$66,812.50	(25.00%)
Total Project Cost:	\$267,250.00	(100.00%)
SRMC (100% Federal)	\$13,362.50	



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Jared Moskowitz
Director

January 17, 2020

Mr. Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**Re: Project # 4337-271-R
City of Bonita Springs Creek/Bonita Springs Golf Course,
Flood Improvement Project**

Dear Mr. Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract number H0340 between the City of Bonita Springs and the Division of Emergency Management.

Please forward all Requests for Reimbursement (Attachment D) to the Division of Emergency Management at the following address:

Mr. Mike Lalbachan, Project Manager
Hazard Mitigation Grant Program
Florida Division of Emergency Management
2702 Director Row
Orlando, Florida 32809

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Mr. Mike Lalbachan, at (850) 815-4571.

Respectfully,

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

MEA:km/ma

Enclosure

Agreement Number: H0340

Project Number: 4337-271-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a "subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract."

As defined by 2 C.F.R. §200.74, "pass-through entity" means "a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program."

As defined by 2 C.F.R. §200.93, "Sub-Recipient" means "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program."

As defined by 2 C.F.R. §200.38, "Federal award" means "Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity."

As defined by 2 C.F.R. §200.92, "subaward" means "an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity."

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	City of Bonita Springs
Sub-Recipient's unique entity identifier:	593649914
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	August 23, 2019
Subaward Period of Performance Start and End Date:	Upon Execution thru December 31, 2020
Amount of Federal Funds Obligated by this Agreement:	\$200,812.50
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	\$210,000.00
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	\$210,000.00
Federal award project description (see FFATA):	Flood Improvement
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Mike.Lalbachan@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and the City of Bonita Springs, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Mr. Mike Lalbachan, Project Manager
Division of Emergency Management
2702 Directors Row
Orlando, Florida 32809-5631
Telephone: 850-815-4571
Email: Mike.Lalbachan@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Mr. Matt Feeney, Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135
Telephone: 239-949-6246
Email: matt.feeney@cityofbonitasprings.org

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

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

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on December 31, 2020, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is \$200,812.50.
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,

iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10)RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

- i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.
 - iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.
 - v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
- d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.
- e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.
- f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.
- g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(11)AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient's fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15)DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:
 - i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
 - ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
 - iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
 - iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17)TERMINATION

- a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.
- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.
- d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division's review and comments shall not constitute an approval of the solicitation. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. "[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions

(20) PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22)MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in

excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

I. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

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

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

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

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

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

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

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26)EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

v. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vi. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared

ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(32)CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33)ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: _____

Name and Title: _____


PETER SIMMONS / MAYOR

Date: _____

DECEMBER 20, 2019

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____


Miles E. Anderson, for

Name and Title: _____

Jared Moskowitz, Director

Date: _____

1-17-2020

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: \$200,812.50

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the Bonita Springs Golf Course area in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) DR-4337-271-R, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135. Coordinates (26.379030, -81.783310).

The project area covers from the northeast close to the intersection of Wild Turkey Avenue and Saint Patrick Lane, to the southwest near Shangrilla Road and Cockleshell Drive.

The scope is for Phase I only; which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposal includes acquiring land, up-size culvert, construction of roadway, drainage system, ditches, swales, canals, berms, filter marshes, flow control structures, and overland flowways.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation

demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
 - b) Construction Plans and bid documents.
 - c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
 - d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
 - e) Color maps including topographical, aerial, and ground disturbance.
 - f) Color photographs of the project area and areas of ground disturbance.
 - g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.
 - h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135.

The designed project shall provide protection against a 100-year storm event.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.

- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 5) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 6) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 7) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

This is FEMA project number **4337-271-R**. It is funded under HMGP, FEMA-Irma-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **December 31, 2020**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State & Local Contracting:	3 Months
H & H Study:	3 Months
Engineering Design Specifications:	6 Months
Permitting / Survey:	2 Months
<u>Deliverables Submitted for Phase II Review:</u>	<u>1 Month</u>
Total Period of Performance:	15 Months

BUDGET**Line Item Budget***

	<u>Project Cost</u>	<u>Federal Share</u>	<u>Non-Federal Share</u>
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$267,750.00	\$200,812.50	\$66,937.50
Initial Agreement Amount:	\$267,750.00	\$200,812.50	\$66,937.50
***Contingency Funds:	\$12,250.00	\$9,187.50	\$3,062.50
Project Total:	\$280,000.00	\$210,000.00	\$70,000.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$12,250.00.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$12,750.00

Funding Summary

Federal Share:	\$210,000.00	(75%)
Non-Federal Share:	\$70,000.00	(25%)
Total Project Cost:	\$280,000.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
- For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtml
- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the **“Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)”** which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient’s projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior’s Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO’s opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.
- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

REQUEST FOR ADVANCE OR REIMBURSEMENT OF
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDSSUB-RECIPIENT: City of Bonita Springs

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Flood Improvement, Phase I PROJECT #: 4337-271-RPROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0340

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount 75%	Obligated Non- Federal 25%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	\$ _____
ADMINISTRATIVE COST	\$ _____
APPROVED FOR PAYMENT	\$ _____
GOVERNOR'S AUTHORIZED REPRESENTATIVE _____	
DATE _____	

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MITIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: City of Bonita Springs PAYMENT #: _____
PROJECT TYPE: Flood Improvement, Phase I PROJECT #: 4337-271-R
PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0340

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
This payment represents <u>1/2</u> completion of the project.				TOTAL	

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

Attachment E
JUSTIFICATION OF ADVANCE PAYMENT

SUB-RECIPIENT: City of Bonita Springs

If you are requesting an advance, indicate same by checking the box below.

☐ ADVANCE REQUESTED

Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20____-20____ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: City of Bonita Springs PROJECT #: 4337-271-R
PROJECT TYPE: Flood Improvement, Phase I CONTRACT #: H0340
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: _____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20 _____ Oct-Dec 20 _____ Jan-Mar 20 _____ Apr-Jun 20 _____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under **Issues** below*)

Percentage of Work Completed (*may be confirmed by state inspectors*): _____ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments**/Elaboration:

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form:

Phone:

~ To be completed by Division staff ~

Date Reviewed: _____ Reviewer: _____
Actions: _____

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

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

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____,
of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is
presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded
from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective
subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

_____	_____
By: _____	City of Bonita Springs
Signature	Sub-Recipient's Name
_____	H0340
Name and Title	DEM Contract Number
_____	4337-271-R
Street Address	FEMA Project Number

City, State, Zip	

Date	

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-271-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$200,812.50

OBLIGATION/ACTION DATE: August 23, 2019

SUBAWARD DATE (if applicable): _____

DUNS#: 196164110

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: City of Bonita Springs
DBA NAME (IF APPLICABLE): City of Bonita Springs
PRINCIPAL PLACE OF BUSINESS ADDRESS:
ADDRESS LINE 1: 9101 Bonita Beach Road
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY Bonita Springs STATE FL ZIP CODE+4** 34135-4215

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

The City of Bonita Springs proposes to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135. Coordinates (26.379030, -81.783310).

The project area covers from the northeast close to the intersection of Wild Turkey Avenue and Saint Patrick Lane, to the southwest near Shangrilla Road and Cockleshell Drive.

The scope is for Phase I only; which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposal includes acquiring land, up-size culvert, construction of roadway, drainage system, ditches, swales, canals, berms, filter marshes, flow control structures, and overland flowways.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE: 19 - 34135-4215

****Providing the Zip+4 ensures that the correct Congressional District is reported.**

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☒

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/execomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

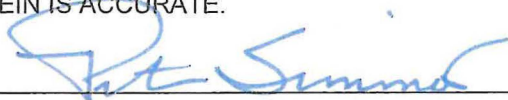
TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____



NAME AND TITLE: Peter Simmons, Mayor

DATE: DECEMBER 20, 2019

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3145). When required by Federal program legislation, all prime construction contracts in excess of \$1500 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3145) and 29 CFR 1.5, as supplemented by Department of Labor regulations (29 CFR Part 5). Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wage ascertained in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3142), as supplemented by Department of Labor regulations (29 CFR Part 5). "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States". The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Salary Standards Act (40 U.S.C. 3701-3709). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3701 and 3702, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3701 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available in the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §101.2-4, and the recipient or subcontractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the submission of patent assignment or performance or, experimental, developmental, or research work under the "funding agreement," the recipient or subcontractor must comply with the requirements of 37 CFR Part 101, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 191-1971) and the Federal Water Pollution Control Act (40 U.S.C. 1351-1397), as amended. "Contracts and subcontracts of amounts in excess of \$50,000 must contain a provision that requires the non-Federal award to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 191-1971) and the Federal Water Pollution Control Act as amended (40 U.S.C. 1351-1397). Violations must be reported to the Federal awarding agency and the District Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6331).

(I) Debarment and Suspension (Excluded Orders 12549 and 12658)—A contract award over \$2 CFR 11.4225 must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OGE guidelines at 2 CFR 192 that implement Executive Orders 12549 (2 CFR Part 192 Comp. p. 109) and 12658 (2 CFR Part 192 Comp. p. 235). "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties excluded involuntarily under statutory or regulatory authority other than Executive Order 12518.

(J) 1976 Anti-Lobbying Amendments (41 U.S.C. 10125). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each year certifies to the FAR above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an official or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1982. Mayday must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are furnished from May 15 through to the non-Federal award.

(17) See 48CFR.922 Procurement of recovered materials.

Appendix III to PART 200—INDEMENT (FPA): COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHEs)

A. General.

This appendix provides criteria for identifying and allocating indirect (FPA) costs at IHEs. Indirect (FPA) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an institutional activity, or any other institutional activity. See subsection B.1. Definition of Facilities and Administration, for a discussion of the components of indirect (FPA) costs.

1. Major Functions of an Institution.

Refers to instruction, organized research, other sponsored activities and other institutional activities defined in this section.

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for degree credit or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

b. *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

c. *Departmental research* means research, development and scholarly activities that are not sponsored research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

d. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities fulfill the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

e. *Other sponsored activities* means programs and activities financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

f. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (FPA) cost activities identified in this Appendix paragraph B. Identification and assignment of indirect (FPA) costs and specialized services facilities described in 48CFR.922 Specialized services facilities of this Part.

Examples of other institutional activities include operation of student halls, dining halls, hospitals and clinics, student unions, intercollegiate activities, bookstores, faculty housing, student apartments, guest houses, chapels, libraries, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise included in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (FPA) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost recovery.* The overall objective of the indirect (FPA) cost allocation process is to distribute the indirect (FPA) costs described in Section B. Identification and assignment of indirect (FPA) costs to



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Jared Moskowitz
Director

March 24, 2021

Mr. Matt Feeney
Public Work Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

**Re: Project #4337-271-R City of Bonita Springs, Bonita Springs Golf Course,
Flood Improvement, Phase I**

Dear Mr. Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract modification number one (1) (Contract #H0340) between the City of Bonita Springs and the Division of Emergency Management.

Please email all Requests for Reimbursement (Attachment D) to the project manager at Project.Manager@em.myflorida.com. The Project Manager for this contract is:

Mr. Hector Aponte, Project Manager
Florida Division of Emergency Management
2702 Director's Row
Orlando, Florida 32809

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Mr. Hector Aponte at (501) 887-7283.

Respectfully,

Miles E. Anderson

Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.03.25 16:48:12 -04'00'

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

MEA/mya

Enclosure

BSC-21-03-059

APPENDIX C-1 - Grants/Subgrants

DIVISION OF EMERGENCY MANAGEMENT Grant/Grant and Aid Subgrant Routing Sheet

DEM Contract/Grant Number: H0340 Mod # 1 Date Initiated: 3/11/21
 Project Manager/Contact Person: Kathleen Marshall/Hector Aponte Phone: 501-887-7283
 Return to Grants Specialist: Maleather Y. Ash, FCCM er Ash Phone: 850-815-4531
 Division Approval: Kathleen Marshall Date: 3/11/21 for MA Date Div Director
 Subgrantee/Funding Source: City of Bonita Springs Received: _____
 Effective Dates: January 17, 2020 - September 30, 2021 Amount: \$200,812.50

Type of Agreement: A) Grant _____ B) G & A Subgrant Agreement Extension
 C) Loan Agreement _____ D) Other (explain) _____

Routing:

First Review – Finance: Recommend Date Received 3/10/21
 Date Reviewed 3/10/21
 Fiscal Mgmt Signature: Stephanie Stachowicz

First Review – Legal: Approved as to legal sufficiency. Date Received _____
 Date Reviewed _____
 Legal Signature: Stachowicz, Stephanie Digitally signed by Stephanie Stachowicz, DN: cn=Stephanie Stachowicz, ou=Director, email=Stephanie.Stachowicz@dem.myflorida.com, c=US, Date: 2021.03.17 13:05:44 -0400

Second Review – Finance _____ Date Received _____
 Date Reviewed _____
 Fiscal Mgmt Signature: _____

Second Review – Legal: _____ Date Received _____
 Date Reviewed _____
 Legal Signature: _____

Distribution: 1 - Division/Bureau with Original Agreement 2 - Grants with Original Agreement 3 - Fiscal Mgmt with Copy of Agreement

APPENDIX D

SUB-RECIPIENT AND CONTRACTUAL AGREEMENT INFORMATION SHEET

SECTION 1-GENERAL CONTRACT/SUBGRANT INFORMATION

REFERENCE #: 20-HM-4337-36-BF-H0340 PROJECT #: 4337-271-R
CONTRACT #: H0340 AWARD AMOUNT: \$ 200,812.50
DIVISION: Emergency Management BUREAU: Mitigation PROGRAM: _____
SUB-RECIPIENT/CONTRACTOR NAME: City of Bonita Springs
FEDERAL EMPLOYER IDENTIFICATION/SOCIAL SECURITY NUMBER: 593649914
OR
FLAIR FUND IDENTIFICATION NUMBER: _____
(STATE AGENCIES ONLY)
SUB- RECIPIENT/CONTRACTOR CONTACT PERSON: Matt Feeney, Public Work Director
SUB-RECIPIENT /CONTRACTOR REMITTANCE ADDRESS:
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135
DEM CONTRACT MANAGER: Kathleen Marshall, Community Programs Administrator KM 3/11/21
BEGINNING DATE: January 17, 2020 ENDING DATE: 09/30/21
MINORITY VENDOR CODE: _____ (If applicable, choose one: H-Black, I-Hispanic, J-Asian, K-Native American, M-Woman)

SECTION 2-SUBGRANT RECIPIENT DATABASE INFORMATION

ALLOCATION OF PROGRAM ASSISTANCE BY COUNTY:

COUNTY	COUNTY AWARD AMOUNT	COUNTY MATCH AMOUNT
<u>City of Bonita Springs</u>	<u>\$ 200,812.50</u>	<u>\$ 66,937.50</u>
_____	_____	_____
_____	_____	_____

SECTION 3-SUBGRANT/CONTRACT FINANCIAL INFORMATION

DEM GRANT # 8702F CFDA # 97.039 CSFA # N/A
ORGANIZATIONAL LEVEL: 31-80-05-05-000 EXPANSION OPTION: BF
FUND: 20-2-750001 OBJECT CODE: 780001 GAA LINE ITEM: _____ CATEGORY: 105154
GRANT REPORTING REQUIREMENTS: QR (Grant Awards Only) (MO-Monthly, QR-Quarterly, NA)
IF THIS IS A MODIFICATION:

MODIFICATION #: 1
EFFECT OF MODIFICATION Extension
AMOUNT OF INCREASE/DECREASE IN AWARD AMOUNT: \$ 0.00
(Be sure to complete SECTION 2 for change in award amount)

Project ID# 4337HM00271

SECTION 4-FINANCE USE ONLY (completed by Finance)

FEID#: _____ FLAIR ENCUMBRANCE #: G69525 INPUT BY: _____ DATE: _____

Contract Number: H0340

Project Number: 4337-271-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
THE CITY OF BONITA SPRINGS**

This Modification Number One made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and the City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0340, dated, January 17, 2020 ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$200,812.50, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on December 31, 2020; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

(8) PERIOD OF AGREEMENT

This Agreement shall begin January 17, 2020 and shall end September 30, 2021, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 1st Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.

6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: 

Name and Title: Mayor, City of Bonita Springs

Date: 3/3/2021

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: Miles E. Anderson

Digitally signed by Miles E. Anderson
DN: cn=Miles E. Anderson, o=DEM, ou=Mitigation,
email=Miles.anderson@em.myflorida.com, c=US
Date: 2021.03.25 16:48:46 -04'00'

Name and Title: Jared Moskowitz, Director

Date: 03/25/2021

Attachment A
(1st Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage of the Bonita Springs Golf Course area in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-271-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of a flow away system in the Bonita Springs Golf Course area, located in Bonita Springs, Florida, 34135. Coordinates (26.379030, -81.783310).

The project area covers from the northeast close to the intersection of Wild Turkey Avenue and Saint Patrick Lane, to the southwest near Shangrilla Road and Cockleshell Drive.

The scope is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall include acquiring land, up-size culvert, and construction of roadway, drainage system ditches, swales, canals, berms, filter marshes, flow control structures, and overland flow ways.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure

worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans and bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.

- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.
 - h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase

I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.

- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 10) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

This is FEMA project number **4337-271-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 17, 2020; and the Period of Performance for this project shall end on **September 30, 2021**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or

- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State/Local Contracting:	1 Month
H&H Study:	3 Months
Engineering Design Specifications:	8 Months
Permitting / Survey:	7 Months
Deliverables Submitted to FDEM:	5 Months
Total Period of Performance:	24 Months

BUDGET

Line Item Budget*

	<u>Project Cost</u>	<u>Federal Share</u>	<u>Non-Federal Share</u>
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$267,750.00	\$200,812.50	\$66,937.50
Initial Agreement Amount:	\$267,750.00	\$200,812.50	\$66,937.50
***Contingency Funds:	\$12,250.00	\$9,187.50	\$3,062.50
Project Total:	\$280,000.00	\$210,000.00	\$70,000.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$12,250.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$12,750.00

Funding Summary

Federal Share:	\$210,000.00	(75%)
Non-Federal Share:	\$70,000.00	(25%)
Total Project Cost:	\$280,000.00	(100.00%)



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Kevin Guthrie
Director

November 19, 2021

Mr. Matt Feeney
Public Works Director
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

Re: Project Number: 4337-271-R, City of Bonita Springs, Bonita Springs Golf Course, Flood Improvement, Phase I

Dear Mr. Feeney:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract modification number two (Contract #H0340) between the City of Bonita Springs and the Division of Emergency Management.

Please email all Requests for Reimbursement (Attachment D) to the project manager at Suzi.Boydston@em.myflorida.com. The Project Manager for this contract is:

Suzi Boydston, Project Manager
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Suzi Boydston at 334-560-6761.

Respectfully,

Laura
Dhuwe

Digitally signed by Laura Dhuwe
DN: cn=Laura Dhuwe, o=DEM,
ou=Mitigation,
email=Laura.Dhuwe@em.myflori
da.com, c=US
Date: 2021.11.19 14:34:19 -05'00'

Miles E. Anderson
Bureau Chief, Mitigation
State Hazard Mitigation Officer

for

Enclosure

Contract Number: H0340

Project Number: 4337-271-R

**MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF BONITA SPRINGS**

This Modification Number Two made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and the City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0340, dated January 17, 2020, ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of \$200,812.50, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on September 30, 2021; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms and increase the Federal Funding under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 8 of the Agreement is hereby amended to read as follows:

(8) PERIOD OF AGREEMENT

This Agreement shall begin January 17, 2020 and shall end March 31, 2022, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Agreement is amended to increase the Federal Funding by \$3,800.00, for the maximum amount payable under the Agreement to \$204,612.50, Two Hundred Four Thousand Six Hundred Twelve Dollars and Fifty Cents)
4. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 2nd Revised Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
5. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
6. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
7. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By: Rich Stunmago

Name and Title: MAYOR

Date: 9/29/2021

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: Laura Dhuwe Digitally signed by Laura Dhuwe
DN: cn=Laura Dhuwe, o=DEM, ou=Mitigation,
email=Laura.Dhuwe@emmyflorida.com, c=US
Date: 2021.11.19 14:33:43 -0500 for

Name and Title: Kevin Guthrie, Director

Date: 11/19/2021

Attachment A
(2nd Revision)
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage of the Bonita Springs Golf Course area in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-271-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of a flow away system in the Bonita Springs Golf Course area located in Bonita Springs, Florida, 34135. Approximately, the project area covers from the North-East close to the intersection of Wild Turkey Avenue and St Patrick Lane, to the South-West near to Shangrilla Road and Cockleshell Drive. Coordinates (26.379030, -81.783310).

The scope of work is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall include acquiring land, up-size culvert, and construction of roadway, drainage system ditches, swales, canals, berms, filter marshes, flow control structures, and overland flow ways.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or

suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all scope of work changes, if any.

- a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.
- b) Construction Plans and bid documents.
- c) Revised cost estimate for Phase II – construction (include Phase I costs), to implement the design project.
- d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.
- e) Color maps including topographical, aerial, and ground disturbance.
- f) Color photographs of the project area and areas of ground disturbance.
- g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.

- h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.
 - i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Sub-Recipient Management Costs (SRMC): The Sub-Recipient shall pre-audit source documentation – personnel, fringe benefits, travel, equipment, supplies, contractual, and indirect costs. A brief narrative is required to identify what the funds will be used for. Documentation shall be detailed and clearly describe each approved task performed, hours devoted to each task, and the hourly rate charged including enough information to calculate the hourly rates based on payroll records. Employee benefits and tasks shall be clearly shown on the Personnel Activity Form.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I

costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of a flow away system in the Bonita Springs Golf Course area in Bonita Springs, Florida, 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated (commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation (structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.
- 2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.
- 3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

- 1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- 2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.

- 3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.
 - a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.
 - b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.
- 4) Historical Preservation compliance documents shall be obtained. Review documentation required:
 - a) Color maps including topographical and aerial with the project location clearly marked.
 - b) Color photographs of any area with ground disturbance (electronic).
 - c) Indicate if project site is located within a designated historic district or historic neighborhood.
- 5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:
 - a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.
 - b) Previous and current use of proposed project area.
 - c) Any known site work or historic uses for the proposed location.
 - d) Any available studies that may have taken place on the property.
- 6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.
- 7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.

- 7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.
- 8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic & Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.
- 9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 10) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.
- 11) Sub-Recipient Management Costs (SRMC), implemented under the Disaster Relief and Recovery Act of 2018 (DRRA), amended Section 324 of the Stafford Act, and the Hazard Mitigation Grant Program Management Costs (Interim) FEMA Policy 104-11-1, provides 100% federal funding under HMGP to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner.
 - a) SRMC must conform to 2 CFR Part 200, Subpart E, applicable program regulations, and Hazard Mitigation Assistance (HMA) Guidance (2015), ensuring costs are reasonable, allowable, allocable and necessary to the overall project.
 - b) Funding is for approved indirect costs, direct administrative costs, and administrative expenses associated with this specific project and shall have adequate documentation.
 - c) SRMC cannot exceed 5% of the total project costs awarded.
 - d) SRMC is 100% federally funded and will be reimbursed based on actual costs incurred for each individual Request for Reimbursement (RFR) submitted with the required documentation.
 - e) SRMC shall be reconciled against actual costs on a quarterly basis and annual basis.
 - f) If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

This is FEMA project number **4337-271-R**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 17, 2020 and the Period of Performance for this project shall end on **March 31, 2022**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or

more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State Contracting:	8 Months
Bidding / Local Procurement:	3 Months
Design Specifications:	8 Months
Permitting / Survey:	7 Months
Deliverables Submitted to FDEM:	5 Months
Total Period of Performance:	31 Months

BUDGET

Line Item Budget*

Phase I	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$0.00	\$0.00	\$0.00
Labor:	\$0.00	\$0.00	\$0.00
Fees:	\$255,000.00	\$191,250.00	\$63,750.00
Initial Agreement Amount:	\$255,000.00	\$191,250.00	\$63,750.00
***Contingency Funds:	\$12,250.00	\$9,187.50	\$3,062.50
Project Total:	\$267,250.00	\$200,437.50	\$66,812.50
****SRMC			
SRMC:	\$13,362.50	\$13,362.50	
SRMC-Pre-Award:	\$0.00	\$0.00	
SRMC Total:	\$13,362.50	\$13,362.50	

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$12,250.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

****** Sub-Recipient Management Costs (SRMC) are included for this project in the amount of \$13,362.50 in Federal funding.** Per the Hazard Mitigation Grant Program Interim FEMA Policy 104-11-1, SRMC provides HMGP funding to Sub-Recipients to efficiently manage the grant and complete activities in a timely manner. SRMC must conform to 2 CFR Part 200, Subpart E, ensuring costs are reasonable, allowable, allocable and necessary to the overall project.

SRMC cannot exceed 5% of the approved total project costs awarded and shall be reimbursed at 5% for each Request for Reimbursement (RFR) submitted with the required documentation.

If the Final Project Reconciliation results in a reduction of total project costs, any resulting SRMC overpayment shall be reimbursed back to the State for return to FEMA prior to FEMA Closeout.

Funding Summary Totals

Federal Share:	\$200,437.50	(75.00%)
Non-Federal Share:	\$66,812.50	(25.00%)
Total Project Cost:	\$267,250.00	(100.00%)
SRMC (100% Federal)	\$13,362.50	

**CITY OF BONITA SPRINGS
AGENDA ITEM SUMMARY**

Green Sheet No. 22-03-040
March 2, 2022

REQUESTED MOTION: Adopt a resolution approving a budget transfer of \$10,000 from the unassigned general fund to the Bonita Blues Festival.

REQUESTOR: Lisa Roberson, Finance Director; Lora Taylor, Communications Director

AGENDA: Consent

STRATEGIC PRIORITY: N/A

BACKGROUND:

On February 16, 2022, City Council voted to contribute \$10,000 to the Bonita Blues Festival and requested that staff return with a budget resolution and recommendation of funding source. Staff is recommending that the funds be provided from the unassigned fund balance.

STAFF RECOMMENDATION: Approve budget transfer.

ATTACHMENTS:

1. Budget Transfer Resolution
-

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPROVING THE BUDGET AMENDMENT FOR FISCAL YEAR 2021-2022; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 29, 2021, the City of Bonita Springs adopted the budget for the fiscal year ending September 30, 2022, Fiscal Year 2021-2022; and

WHEREAS, Section 46(d) of the City Charter allows the transfer for all or part of any unrestricted appropriations from one department to another; and

WHEREAS, City Council has authorized \$10,000 in funding for the Bonita Blues Festival; and

WHEREAS, funding for the expenditure of \$10,000 is available in unassigned fund balance.

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

1. The above "Whereas" clauses are true, correct, and incorporated herein by reference.
2. The City Council authorizes a budget amendment to line item 00.430.574.4819, Bonita Blues Festival, for an increase of \$10,000 to total budgeted expenditures with funding from the General Fund, unassigned fund balance.
3. 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 2nd day of March 2022.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____

City Attorney

Vote:

Quaremba

Purdon

Carr

Corrie

Gibson

Forbes

Steinmeyer

Date filed with City Clerk: _____

REQUESTED MOTION: Presentation from Mr. Kurt Spitzer on redistricting process and discussion.

REQUESTOR: Arleen M. Hunter, City Manager; Carly Sanseverino, Staff Attorney

AGENDA: Presentations

STRATEGIC PRIORITY: #7 Government Transparency

BACKGROUND:

In accordance with the U.S. and State Constitutions, federal and state law, and the City Charter, the City has initiated its decennial redistricting process using the data provided by the 2020 U.S. Census. In November of 2021, the City engaged Kurt Spitzer with Kurt Spitzer & Associates for professional consultation throughout this process, including the preparation of alternative district boundaries.

On January 19, 2022, City Council adopted a resolution establishing the process, intent, and redistricting criteria for the City's redistricting process.

On February 17, 2022, Dr. Bob Lee of FGCU facilitated a public workshop at City Hall, which was also live streamed on BTv. During the workshop, Mr. Spitzer furnished a presentation explaining the criteria and presenting three alternative maps for consideration.

Staff has created a webpage containing documents and resources regarding the City's current process and redistricting information in general. Additionally, staff has created an email address – **bonitaredistricting2022@cityofbonitasprings.org** – to which citizens may send their questions and comments in writing. Staff will make every effort to address these questions on the website, and all written comments will be included in the record.

Mr. Spitzer will be attending via Zoom to present three alternative maps for Council's discussion. Following Council's discussion, staff will be requesting direction to prepare an Ordinance for first reading. Council does not need to choose the final map at this time.

STAFF RECOMMENDATION: Council's pleasure.

ATTACHMENTS:

1. Resolution 22-07
2. Alternative maps

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- 07**

**A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA;
PROVIDING THE INTENT OF THE CITY COUNCIL TO REDISTRICT THE
CITY OF BONITA SPRINGS ELECTION DISTRICTS IN ACCORDANCE
WITH THE CITY CHARTER AND IN CONSIDERATION OF THE 2020
CENSUS CONDUCTED BY THE U.S. CENSUS BUREAU; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, as required by Article I of the Constitution of the United States, the U.S. Census Bureau must conduct a census every ten years to determine the number of people living in the United States; and

WHEREAS, Section 53 of the City Charter provides that in the year 2001, and in the odd-numbered years after each decennial census thereafter, and at any time when required by law, the City Council may redivide the City into six districts as roughly equal in permanent population (along precinct lines) as practical; and

WHEREAS, the City Council most recently redistricted the City by adoption of Ordinance 12-02 using data from the 2010 Census; and

WHEREAS, the U.S. Census Bureau has completed the 2020 Census and the data is now available to the public; and

WHEREAS, in accordance with the City Charter and in consideration of the 2020 Census data, the City Council intends to adjust the boundary lines of the City's election districts by adoption of an ordinance; and

WHEREAS, the City has contracted with Kurt Spitzer & Associates to assist the City Council in analyzing the 2020 Census data and redistricting the City accordingly.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS:

SECTION 1. *Public Participation.* The City Council will conduct a transparent redistricting process with opportunity for public participation. All redistricting plan information will be available to the public in a timely fashion, free of charge, via the City's website and other reasonable means. The public will have the opportunity to submit comments on district maps for City Council's consideration.

SECTION 2. *Expert Consultant.* In March 2022, insofar as practical or possible, Kurt Spitzer & Associates will present to City Council its final recommendation for revisions to the City's election district boundaries in accordance with the criteria provided in this resolution. Kurt Spitzer & Associates must include a map together with a description of the recommended election

districts and, may include several other potential redistricting options that meet the criteria established in this resolution.

SECTION 3. *Redistricting Criteria.* The City Council shall follow established constitutional principles for redistricting in accordance with law. In furtherance of this requirement, the City Council shall adopt election district boundaries that meet the criteria set forth below. With the exception of population equality and compliance with the Voting Rights Act, which are mandatory criteria, there is no order of priority among the remaining criteria, which are discretionary criteria that the Council is choosing to follow to the extent practicable.

- A. ***Population Equality.*** Election districts must be based upon the principle of equal and effective representation as required by the U.S. Constitution. Accordingly, each district must be as nearly of equal population as is practicable. The districts may deviate somewhat from perfect population equality to accommodate the redistricting criteria otherwise set forth in this resolution. The target for population deviation is no more than 3% greater or less than the ideal population for election districts, and in no case may the difference in deviation between the largest and smallest election districts exceed ten percentage points based on the data available from the 2020 census. The City Council may consider future population growth over the next decennial period.
- B. ***Voting Rights Act.*** The districts must comply with Section 2 of the U.S. Voting Rights Act of 1965, which prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in certain language minority groups, or which result in denying a racial or language minority and equal opportunity to participate in the political process. To this end, election districts must not be drawn in a manner that results in the dilution of the vote of a racial, ethnic, or language minority group.
- C. ***Compactness.*** Each district should to the extent practicable be compact, striving for a minimum distance between all parts of the district with no bizarre shapes. For example, a circle, square, or hexagon would be examples of shapes that are compact.
- D. ***Contiguity.*** Each district must have contiguous territory, where all parts of the district are connected at some point with the rest of the district. Contiguity may be achieved by crossing a waterbody.
- E. ***Geographical Boundaries.*** The boundaries of each district should, to the extent practicable, recognize significant natural or man-made boundaries. For example, these include water bodies, major highways, or railroad tracks.
- F. ***Political Boundaries.*** Each district should, to the extent practicable, recognize and not split existing political boundaries such as U.S. Congressional and Florida Legislative districts, voting precincts, or census blocks.
- G. ***Communities of Interest.*** Each district should to the extent practicable recognize and not split existing communities of interest such as where people share recognizable social, political, cultural, religious, or economic interests. Communities of interest may

include but are not limited to established neighborhoods and subdivisions, downtown districts, historical districts, or economic districts.

H. ***Existing District Cores.*** Each district should, to the extent practicable, maintain existing election districts as previously drawn.

SECTION 4. *Intended timeline.* The City Council intends to establish revised election district boundaries with an ordinance adopted no later than May 4, 2022, insofar as practical or possible.

SECTION 5. *Effective date.* This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 19th day of January, 2022.

AUTHENTICATION

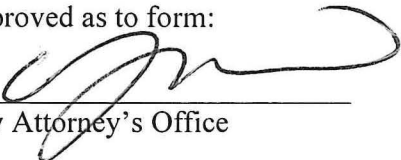


Mayor Rick Steinmeyer



City Clerk's Office

Approved as to form:



City Attorney's Office

[Seal]



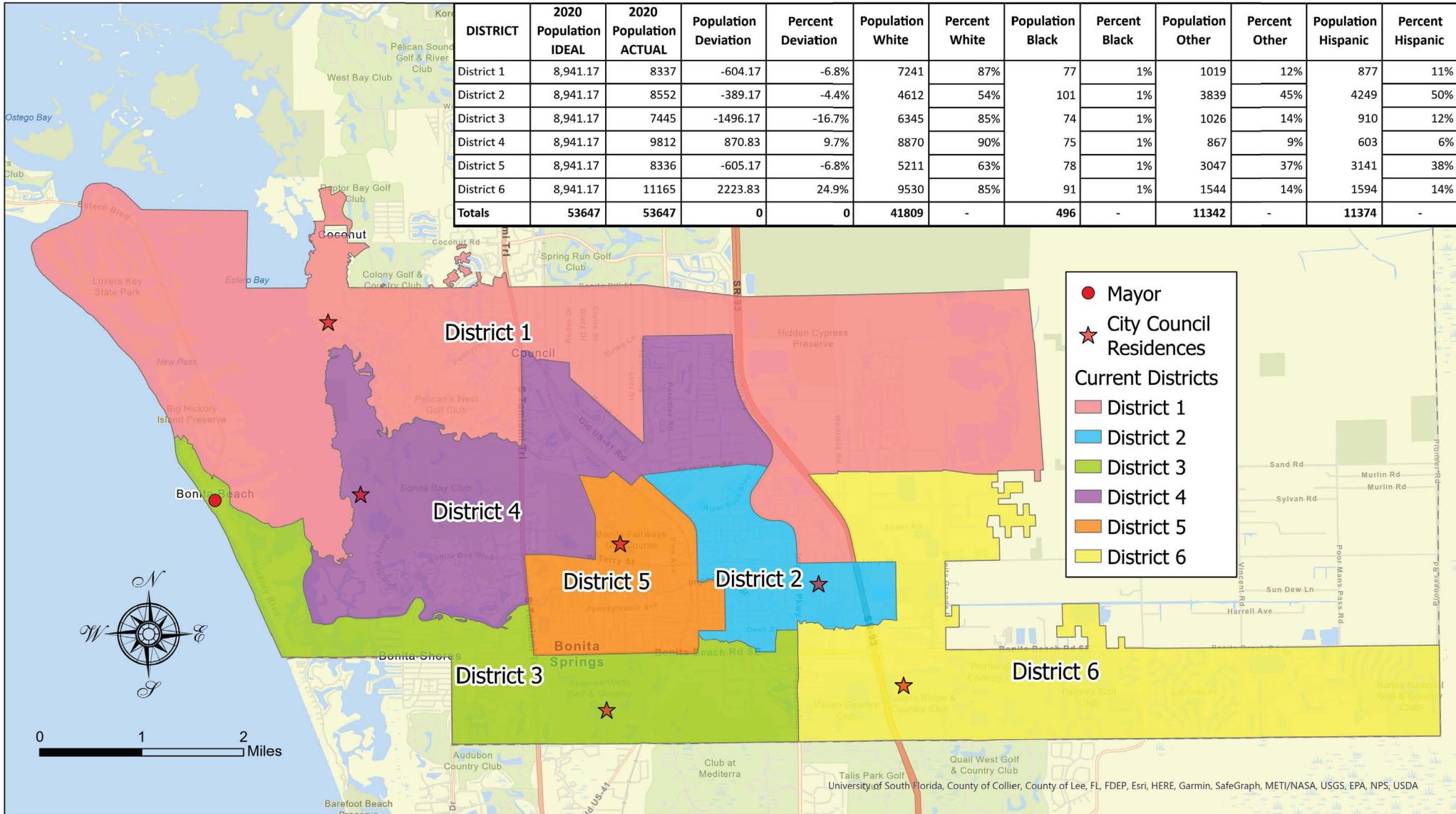
Vote:

Carr Aye
Corrie Aye
Forbes Aye
Gibson Aye

Purdon Aye
Quaremba Aye
Steinmeyer Aye

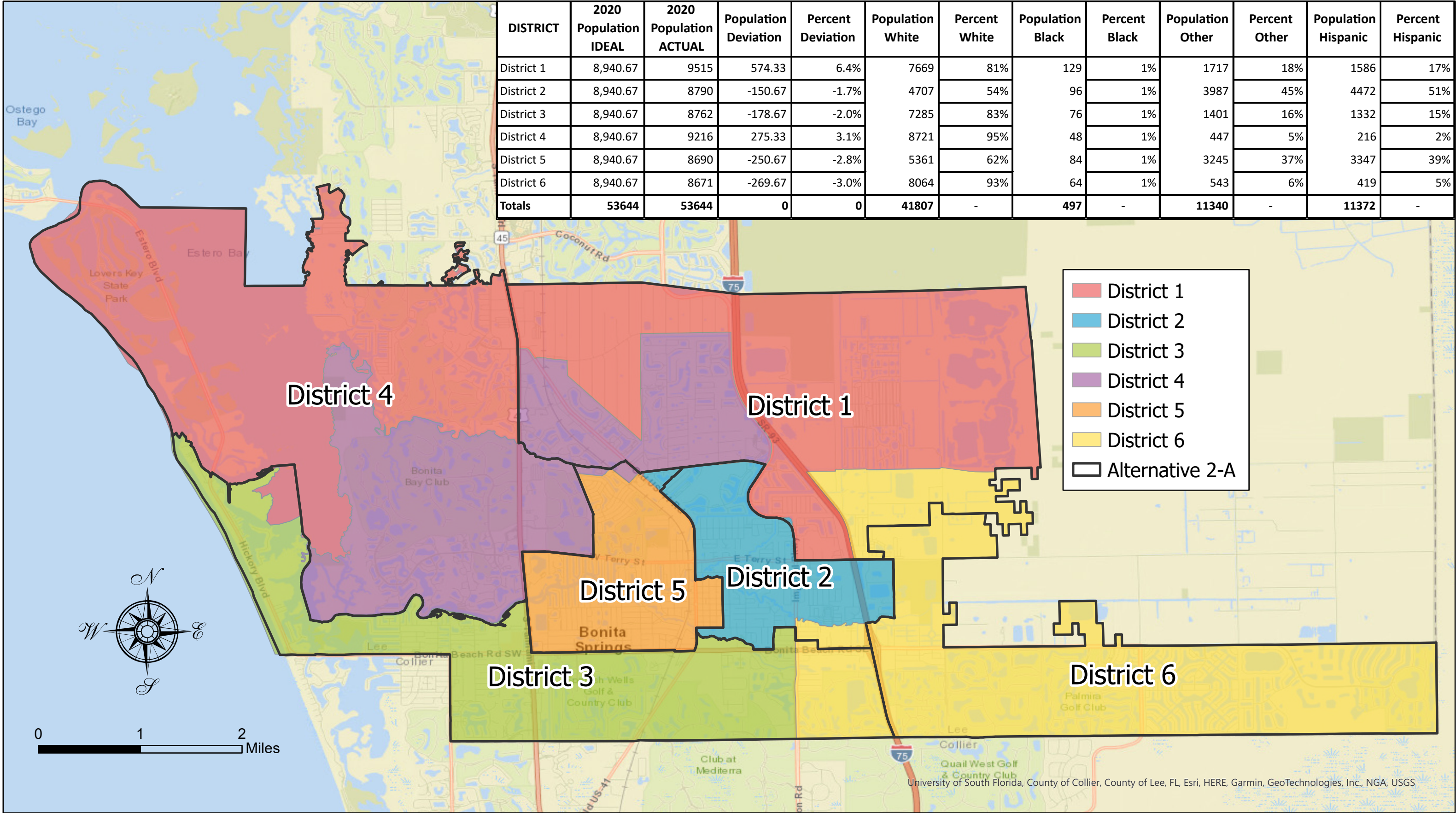


Current City Council Districts 2020 Redistricting Data





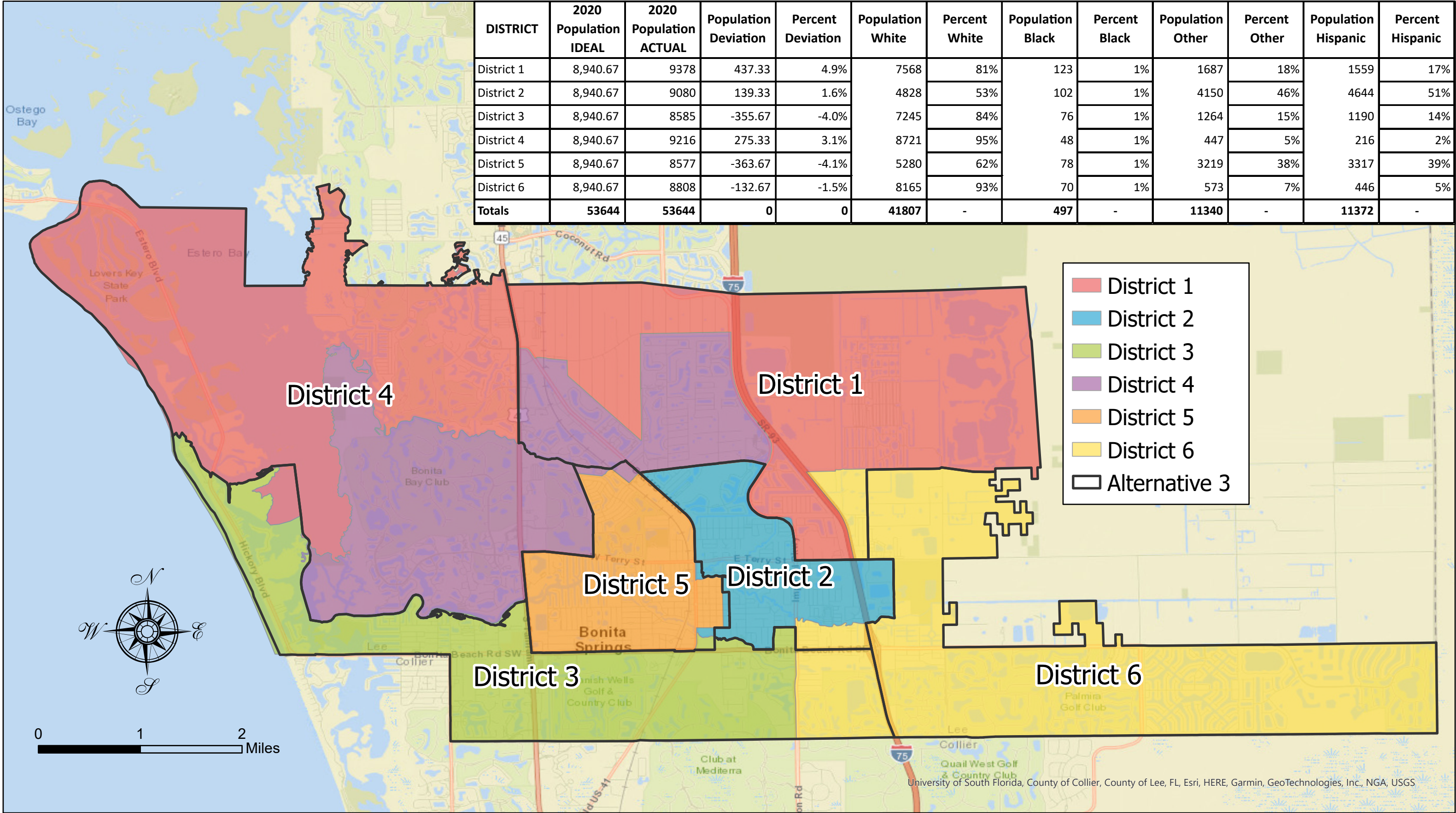
City Council Districts Draft Alternative 2-A





City Council Districts

Draft Alternative 3



City of Bonita Springs
Draft Redistricting Options

Alternative 1 <i>D = 8.18</i>												
DISTRICT	2020 Population IDEAL	2020 Population ACTUAL	Population Deviation	Percent Deviation	Population White	Percent White	Population Black	Percent Black	Population Other	Percent Other	Population Hispanic	Percent Hispanic
District 1	8,941	9,110	169	1.89%	7,943	87.19%	81	0.89%	1,086	11.92%	931	10.22%
District 2	8,941	9,080	139	1.56%	4,828	53.17%	102	1.12%	4,150	45.70%	4,644	51.15%
District 3	8,941	8,585	(356)	-3.98%	7,245	84.39%	76	0.89%	1,264	14.72%	1,190	13.86%
District 4	8,941	8,984	43	0.48%	8,122	90.41%	72	0.80%	790	8.79%	540	6.01%
District 5	8,941	8,577	(364)	-4.07%	5,280	61.56%	78	0.91%	3,219	37.53%	3,317	38.67%
District 6	8,941	9,308	367	4.11%	8,389	90.13%	88	0.95%	831	8.93%	750	8.06%
Totals	53,644	53,644			41,807		497		11,340		11,372	

Alternative 2-A <i>D = 9.44</i>												
DISTRICT	2020 Population IDEAL	2020 Population ACTUAL	Population Deviation	Percent Deviation	Population White	Percent White	Population Black	Percent Black	Population Other	Percent Other	Population Hispanic	Percent Hispanic
District 1	8,941	9,515	574	6.42%	7,669	80.60%	129	1.36%	1,717	18.05%	1,586	16.67%
District 2	8,941	8,790	(151)	-1.69%	4,707	53.55%	96	1.09%	3,987	45.36%	4,472	50.88%
District 3	8,941	8,762	(179)	-2.00%	7,285	83.14%	76	0.87%	1,401	15.99%	1,332	15.20%
District 4	8,941	9,216	275	3.08%	8,721	94.63%	48	0.52%	447	4.85%	216	2.34%
District 5	8,941	8,690	(251)	-2.80%	5,361	61.69%	84	0.97%	3,245	37.34%	3,347	38.52%
District 6	8,941	8,671	(270)	-3.02%	8,064	93.00%	64	0.74%	543	6.26%	419	4.83%
Totals	53,644	53,644			41,807		497		11,340		11,372	

Alternative 3 <i>D = 8.96</i>												
DISTRICT	2020 Population IDEAL	2020 Population ACTUAL	Population Deviation	Percent Deviation	Population White	Percent White	Population Black	Percent Black	Population Other	Percent Other	Population Hispanic	Percent Hispanic
District 1	8,941	9,378	437	4.89%	7,568	80.70%	123	1.31%	1,687	17.99%	1,559	16.62%
District 2	8,941	9,080	139	1.56%	4,828	53.17%	102	1.12%	4,150	45.70%	4,644	51.15%
District 3	8,941	8,585	(356)	-3.98%	7,245	84.39%	76	0.89%	1,264	14.72%	1,190	13.86%
District 4	8,941	9,216	275	3.08%	8,721	94.63%	48	0.52%	447	4.85%	216	2.34%
District 5	8,941	8,577	(364)	-4.07%	5,280	61.56%	78	0.91%	3,219	37.53%	3,317	38.67%
District 6	8,941	8,808	(133)	-1.48%	8,165	92.70%	70	0.79%	573	6.51%	446	5.06%
Totals	53,644	53,644			41,807		497		11,340		11,372	

REQUESTED MOTION: Presentation from Singhofen & Associates, Inc. regarding stormwater improvements for the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

REQUESTOR: Matt Feeney, Assistant City Manager and Elly McKuen, Senior Project Manager

AGENDA: Presentations

STRATEGIC PRIORITY: 1) Stormwater Management

BACKGROUND: City Council entered into an agreement with Singhofen & Associates to develop and evaluate three (3) drainage improvement alternatives for the property in the watershed surrounding the Spring Creek/Bonita Springs Golf & Country Club. Funding for the proposed improvements are through a partnership with Florida Division of Emergency Management for the FEMA Hazard Mitigation Grant Program (HMGP). HMGP funds seventy-five percent (75%) of the project while the City must provide the remaining twenty-five percent (25%) match. Any private lands acquired during the project must be from a willing seller.

At the June 2, 2021 City Council meeting, Singhofen & Associates, Inc. presented three (3) conceptual alternatives for project development, only two of which were cost beneficial. Council provided direction to staff and Singhofen and Associates, Inc. to approach the golf course property owner to develop a hybrid of the two cost beneficial alternatives that would satisfy the landowner as willing seller.

The presentation will provide final design developed for the proposed project and its benefits.

STAFF RECOMMENDATION: Receive the presentation.

ATTACHMENTS: None.

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

REQUESTED MOTION: PUBLIC HEARING TO CONSIDER A RESOLUTION OF THE CITY OF BONITA SPRINGS; AMENDING RESOLUTION 21-112 TO ADD ADDITIONAL BUILDING PERMIT APPLICATION FEE REDUCTIONS FOR TRADE, RESIDENTIAL POOL, AND COMMERCIAL POOL PERMITS TO THE COMMUNITY DEVELOPMENT BUILDING PERMIT FEE SCHEDULE; AND PROVIDING FOR AN EFFECTIVE DATE.

REQUESTOR: John Dulmer, AICP, Community Development

AGENDA: Public Hearing

STRATEGIC PRIORITY: #8 Economic Development

BACKGROUND:

City Council recently extended the reduction in building permit fees by 75% and permanently reduced Trade Permit applications to \$75 on December 15, 2021, pursuant to City Resolution No. 21-112. In 2021 under the current reduction, customers saved over \$2m in permitting fees, and reduced the building permit fee surplus fund balance by a total of -\$1.2m.

During that meeting, City Council directed Community Development Staff to evaluate what other flat fees could be reduced. With the proposed fee changes shown below, customers would have saved an additional \$311k in 2021, and reduced the surplus fund balance by a total of -\$1.5m.

Permit Type	Current Fee	Proposed Reduced Fee
Trade	\$75	\$25
Pool (Residential)	\$300	\$100
Pool (Commercial)	\$600	\$300

As part of the continued effort to reduce the building permit fee surplus fund balance, Community Development Staff recommends a temporary reduction of these fees, which can be re-evaluated prior to automatic repeal on January 1, 2023.

STAFF RECOMMENDATION: Approve the resolution granting additional temporary building permit application fee reductions.

ATTACHMENTS:

1. DRAFT Resolution
2. Resolution No. 21-112

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 22 -

A RESOLUTION OF THE CITY OF BONITA SPRINGS; AMENDING
RESOLUTION 21-112 TO ADD ADDITIONAL BUILDING PERMIT
APPLICATION FEE REDUCTIONS FOR TRADE, RESIDENTIAL POOL,
AND COMMERCIAL POOL PERMITS TO THE COMMUNITY
DEVELOPMENT BUILDING PERMIT FEE SCHEDULE; AND PROVIDING
FOR AN EFFECTIVE DATE.

WHEREAS, on May 21, 2008, Bonita Springs City Council entered into an agreement with CH2M HILL to provide Community Development, Building Permitting and Inspections and Administrative Support Services; and

WHEREAS, the agreement requires City Council to adopt a building permit fee schedule to support the self-funding of those services; and

WHEREAS, Section 553.80, Florida Statutes, provides that local governments may provide a schedule of reasonable fees for enforcing the Florida Building Code, and such fees may only be used for the carrying a local government's permitting and enforcement obligations; and

WHEREAS, pursuant to changes by the legislature in 2019, local government's ability to carry forward balances beyond their operating budget for future use thereby requiring any local government, including Bonita Springs, to reduce those excess funds; and

WHEREAS, following input from Community Development, the Building Industry, and other members of the public as to what a schedule of reasonable inspection fees should be in order to defer the costs of inspection and enforcement of the provisions of its building code, hereby proposed in accordance with Sections 553.80(7) and 166.222, Florida Statutes, a revised building permit inspection fee schedule; and

WHEREAS, the City Council had determined that it was in the best interest of the citizenry to reduce current Building Permit and Plan Review fees for Residential and Commercial Building permit applications by seventy-five percent (75%) for one year, as may be extended, to conform with statutory limits; and

WHEREAS, the City Council had determined that the Building Permit and Plan Review fees should be reduced for another year pursuant to City Resolution No. 21-112; and

WHEREAS, the City Council requested Community Development to evaluate additional building permit fee reductions in addition to those approved in City Resolution No. 21-112; and

WHEREAS, as part of the continued effort to reduce the building permit fee fund balance, Community Development recommends temporarily reducing trade permits and pool permits (residential and commercial) application fees; and

WHEREAS, this resolution amends Resolution No. 21-112 to add these additional building permit application fee reductions.

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

1. The foregoing recitals are hereby fully incorporated herein by this reference and are deemed a material part of this Resolution.
2. The City shall temporarily reduce the Trade permit application fee to \$25 per permit; the Pool (Residential) permit application fee to \$100 per permit (currently \$300), the Pool (Commercial) permit application fee to \$300 (currently \$600) per permit beginning on the effective date of this Resolution.
3. Trade and Pool permit applications issued prior to the effective date of the Resolution shall not qualify for the Building Permit reduction.
4. The City Manager is hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed appropriate and necessary.
5. This Resolution shall be automatically repealed on January 1, 2023, reverting the prior fee schedule, unless further extended or otherwise revised by the City Council.
6. If any section, subsection, sentence, clause, phrase, word or portion of the resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereto.
7. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 2nd day of March 2022.

AUTHENTICATION:

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

APPROVED AS TO FORM: _____
City Attorney

Vote:

Steinmeyer	Corrie
Quaremba	Gibson
Purdon	Forbes
Carr	

Date filed with City Clerk: _____

BUILDING DEPARTMENT NON-VALUATION BASED FLAT FEES

PERMIT TYPE / WORK CLASS	CURRENT FEE
ACC - Canopy, Screen Room, Shed	\$75.00
ACC - Carport, Greenhouse	\$65.00
ACC - Detached Garage	\$200.00 1st 300 sq. ft. add \$10.00 per 100 sq. ft. over 300 sq. ft.
ACC - Deck/Slab, Pool Enclosure, Glass/Utility Room, Satellite Antennae/Dish	\$100.00
ACC - Gazebo	\$70.00
DEM - Demolition	\$100.00 w/ asbestos monitoring \$300.00
DSH - Boat Dock/Pilings	\$0.50/sq. ft. – minimum \$100.00 permit fee
DSH - Boat Lift, Dredging	\$100.00
DSH - Boathouse	\$150.00
DSH - Davit	\$25.00/pair
DSH - Rip Rap	\$1.50/linear ft. – minimum \$75.00 permit fee
DSH - Seawall	\$1.50/linear ft. – minimum \$150.00 permit fee
FNC - Fence	\$50.00
FNC - Structural Wall	\$1.00/lin. ft. – minimum \$100.00 permit fee
MRV - Mobile Home, Temp Construction Trailer	\$100.00
MSC - Windows & Entry Doors, Shutters, Siding, Garage Doors	\$100.00
POL - New Pool & Spa, Revision	\$300.00
POL - New Commercial Pool	\$600.00
SGN - Free Standing Sign	\$250.00
SGN - Wall Sign	\$50.00
TRA - Trade Permit	\$75.00
USE - Occupational Tax/Use Permit	\$100.00
Permit - Additional Electric, Mechanical, Plumbing	\$75.00
Permit - After the fact penalty	Varies
Permit - Completion of expired Lee County permit	\$100.00
Permit - Extensions	\$50.00/3 months 1st extension; \$100.00/3 months 2nd extension
Permit - Legislative extension	\$200.00
Permit - Reinspections	\$50.00
Permit - Structure Move	\$200.00
Permit - Miscellaneous	Varies

Effective March 2, 2022, the following permit application fees will be temporarily reduced as follows:

Permit Type	Temporary Reduced Fee
Trade	\$25
Pool (Residential)	\$100
Pool (Commercial)	\$300

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 21 - 112

A RESOLUTION OF THE CITY OF BONITA SPRINGS;
EXTENDING RESOLUTION 20-125 SETTING FORTH
THE REVISED COMMUNITY DEVELOPMENT BUILDING
PERMIT FEES; AND PROVIDING FOR AN EFFECTIVE
DATE.

WHEREAS, on May 21, 2008, Bonita Springs City Council entered into an agreement with CH2M HILL to provide Community Development, Building Permitting and Inspections and Administrative Support Services; and

WHEREAS, the agreement requires City Council to adopt a building permit fee schedule to support the self-funding of those services; and

WHEREAS, Section 553.80, Florida Statutes, provides that local governments may provide a schedule of reasonable fees for enforcing the Florida Building Code and such fees may only be used for the carrying out a local government's permitting and enforcement obligations; and

WHEREAS, new legislation has enacted limits on a local government's ability to carry forward balances beyond their operating budget for future use thereby requiring any local government, including Bonita Springs, to reduce those excess funds; and

WHEREAS, following input from Community Development, the building industry, and members of the public as to what a schedule of reasonable inspection fees should be in order to defer the costs of inspection and enforcement of the provisions of its building code, hereby proposed in accordance with Sections 553.80(7) and 166.222, Florida Statutes; and

WHEREAS, the City Council has determined that it is in the best interest of the citizenry to reduce current Building Permit and Plan Review fees for Residential and Commercial Building permit applications by seventy-five percent (75%) for an additional year, as may be extended, to conform with statutory limits; and

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

1. The foregoing recitals are hereby fully incorporated herein by this reference and are deemed a material part of this Resolution.

2. The Building Permit and Plan Review fees currently being charged and subject to this Resolution, are attached as "Exhibit A".

3. The City shall temporarily reduce the Permit and Plan Review fees for Residential and Commercial building permit applications by seventy-five percent (75%) for one year beginning on the effective date of this Resolution.

4. The City Manager is hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed appropriate and necessary.

5. Applicants may request one six-month extension of an issued Residential and Commercial Building permit subject to the seventy-five percent (75%) reduction. Additional permit extensions shall cause forfeiture of the fee reduction whereby full fees in effect at that time shall be accessed prior to issuance of an additional extensions.

6. This Resolution shall be automatically repealed on January 1, 2023, reverting the prior fee schedule, unless further extended or otherwise revised by the City Council.

7. This Resolution shall take effect immediately upon adoption, with new fees shall remain in effect until January 1, 2023.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 15th day of December 2021.

AUTHENTICATION:


City Clerk's Office


Mayor Riek Steinmeyer

APPROVED AS TO FORM: 
City Attorney's Office

Vote:

Steinmeyer	Aye	Corrie	Aye
Quaremba	Aye	Gibson	Aye
Purdon	Aye	Forbes	Aye
Carr	Aye		

Date filed with City Clerk: 12/15/21

Building Permitting Fee Schedule Effective January 1, 2009

Residential Plan Review = 25% of Fee Commercial Plan Review = 50% of Fee

TOTAL VALUATION	FEE
\$1.00 to \$2,000.00	\$75.00
\$2,001.00 to \$25,000.00	\$75.00 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$397.00 for the first \$25,000.00 plus \$9.70 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$639.50 for the first \$50,000.00 plus \$6.58 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$968.50 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,072.50 for the first \$500,000.00 plus \$4.42 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and above	\$5,282.50 for the first \$1,000,000.00 plus \$2.74 for each additional \$1,000.00, or fraction thereof

REQUESTED MOTION: Adopt Budget Transfer Resolution and approve the proposal from EnviroStruct, LLC from the Construction Manager at Risk Continuing Services agreement in an amount not to exceed \$2,268,632 for Community Park Baseball Complex Phase 2 renovations.

REQUESTOR: Nicole Perino, Parks and Recreation Director; Lisa Roberson, Director of Financial & Administrative Services

AGENDA: City Manager's Items

STRATEGIC PRIORITY: #5 Community Aesthetics

BACKGROUND: On February 17, 2021, City Council accepted a presentation from Waldrop Engineering on the construction completion of the Bonita Springs Community Park Baseball Complex Phase I project and provided direction to staff to bring forward a proposal to continue to Community Park Baseball Complex Phase 2, which was approved at the March 3, 2021, Council meeting.

Phase 2 of this project includes renovations of fields 1, 2 and 4 to meet Little League standards with complete turf replacement, grading and drainage improvements, modify and expand for a new irrigation design, relocate bases, base lines and pitcher's mounds, as well as upgraded scoreboards. Renovations to all 4 fields include new fencing and gate layouts including new backstops and safety netting, and the design of furnishings to include locations and construction specifications of dugouts and scorekeeper areas per 3D visual specifications.

Staff utilized the CN 19-12 Construction Manager at Risk Continuing Services agreement approved contractor list to solicit the attached guaranteed maximum price (GMP) proposal from EnviroStruct, LLC for the Community Park Baseball Complex Phase 2 renovations in the amount of \$2,268,632. The work is outlined in the scope of work and fee proposal attached. Funding for Phase 2 improvements is included in the current fiscal year budget in the amount of \$1,200,000 (GL: 30.603.572.6015). Also attached is a resolution approving a budget transfer to transfer \$1,068,632 from the general unassigned fund balance to Community Park Baseball Complex CIP.

Additionally, City Council approved a legislative appropriation request of \$750,000 which has been submitted to the state for additional funding of this project. Should the request be funded, the unused general funds could be reallocated.

STAFF RECOMMENDATION: Adopt Budget Transfer Resolution and approve the proposal.

ATTACHMENTS:

1. Proposal and scope of work
2. Resolution

REVIEWERS:

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

Council Action: Approved ___ Denied ___ Deferred ___ Other _____



February 22, 2022

Ms. Nicole Perino
Parks & Recreation Director
City of Bonita Springs
26740 Pine Ave.
Bonita Springs, Florida 34135

RE: City of Bonita Springs – Community Park Phase 2

Dear Nicole:

We are pleased to present you with this estimate for the City of Bonita Springs Community Park – Phase 2. The total cost for the project \$2,268,631.88

Attached is a detailed breakdown of the project and our clarification summary sheet.

Please let me know if you have any questions. Talk to you soon.

Sincerely,

Jacob Huntoon
Estimator
EnviroStruct, LLC
239-494-5700 Office
239-405-5282 Cell
Jacob@Envirostruct.net
www.EnviroStruct.net

Bonita Springs Community Park - Phase 2
Bonita Springs Community Park
Estimate
February 22, 2022



Bldg Area: 0 sf
Site Area: .0 ac.

General Conditions (4 Months)

Total	\$	83,325.00
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Sub Contractor & Supplier Cost

Cost Code	Description	Qty.	U/M	Total
02-035	1 Demo	1	LS	\$ 165,808.08
02-117	2 Field 1	1	LS	\$ 428,165.92
02-001	3 Field 2	1	LS	\$ 535,964.11
02-026	4 Field 3	1	LS	\$ 338,044.99
02-121	5 Field 4	1	LS	\$ 533,768.07
02-135	6 Misc - Common Areas	1	LS	\$ 12,000.00
Total				\$ 2,013,751.17

Estimate Summary

Total General Conditions w/ Labor Burden	\$	83,325.00
Total Subcontractor Costs	\$	2,013,751.17
Contingency	\$	-
Permit & Impact Fees		By Owner
Builders Risk		Excluded
Liability Insurance	\$	16,776.61
Performance & Payment Bond	\$	16,318.00
Total Fee	\$	138,461.10
Total Base Bid	\$	2,268,631.88

Qualifications & Assumptions:



Bonita Springs Community Park – Phase 2

Scope of Work

2.21.2022

Schedule – Is based on 18 weeks of construction once we receive the building permit. One fulltime superintendent will be onsite daily to manage the project and weekly visits from our General Superintendent and Project Manager to monitor the progress of the job.

Pricing – Is based off a guaranteed maximum price

Sitework, Demolition, Sod, Irrigation:

- Includes stripping and removing existing sod and clay to ballfield (#1,2,4)
- Includes herbicide spray of the existing turf, mill dead turf and reverse till back into the ground.
- Includes new bermuda sod on ballfields (#1,2,4)
- Includes new clay on ballfields (#1,2,4) – Clay Spec CC Calhoun 80/20
- Includes laser grading on ballfields (#1,2,4)
- Includes all new irrigation on ballfields (#1,2,4) – Spec; replacing all valves at the main line, lateral lines, all new joints, Hunter I-25 heads
- Includes new magnetic bases and pitcher's mound on ballfields (#1,2,4)
- Includes removing chain link around the perimeter of the ballfields (#1,2,3,4)
- Includes removing existing scoreboard on the ballfields (#1,2,3,4)
- Includes removing existing safety nets & poles on the ballfields (#1,2,3,4)
- Includes removing foul ball markers a qty of 4
- Includes removing and saving a qty. of 4 foul ball markers

Fence & Gates:

- Includes 8' chain link fence around a qty. of 8 dugouts
- Includes 8' chain link fence around the perimeter of the ballfields (#1,2,3,4)
- Includes a qty. 5 double maintenance chain link fence gates
- Includes 16' chain link fence and a qty. 8 gates per the plans
- Includes 20' chain link fence per the plans
- Includes safety netting 32' tall at ballfields (#1,2,3,4)

**Concrete Curb:**

- Includes forming installing 8" curb on ballfields (#1,2,3,4)
- Includes drop access on ballfields (#1,2,3,4)
- Repairing curb work per the plans ballfields (#1,2,3,4)

Dugout:

- Includes all material and labor to install a qty. 8 custom dugouts
- Includes all the concrete and masonry per the sheet LS508
- Includes saw cutting, removing, and disposing of the concrete floor at 8 dugout locations
- Includes aluminum roofing 1/8" thick – ceiling finish to be aluminum cladding
- Includes level 4 smooth trowel finish
- Includes finish paint on all new surfaces
- Includes new NDS Pipe for the drainage per the layout
- Includes a qty. of 8 dugout benches per the plans and specifications

Scorekeepers Shade & Scorekeepers Bench:

- Includes 4 custom scorekeepers shade structures made from aluminum roofing 1/8" thick
- Includes 4 scorekeeper benches per the plan

Foul Pole Install:

- Includes installing 6 new foul ball markers on ballfield (#1,2,4)

Scoreboard:

- Includes disconnecting, removing, dismantling the existing scoreboards.
- Includes purchasing and installing a qty. of 4 scoreboards model 3355 from Varsity Scoreboard
- This includes all the mounting hardware and concrete foundations
- Includes modifying the new electrical to accommodate the new scoreboard

Plumbing:

- Includes 4 new hose bibs at field (#1,2,3,4)

Grading and Bahia Sod:

- Includes miscellaneous grading behind the ballfields to the proper slope
- Includes miscellaneous bahia sod for areas that are going to get disturbed during construction



Clarifications:

- Excludes design and engineering fees
- Excludes structural engineering fees
- Excludes permit and impact fees
- Excludes utility connection and electrical connection fee
- Includes performance and payment bond
- Excludes builders risk insurance

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPROVING THE BUDGET AMENDMENT FOR FISCAL YEAR 2021-2022; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 29, 2021, the City of Bonita Springs adopted the budget for the fiscal year ending September 30, 2022, Fiscal Year 2021-2022; and

WHEREAS, Section 46(d) of the City Charter allows the transfer for all or part of any unrestricted appropriations from one department to another; and

WHEREAS, as outlined in City Council agenda item 22-03-035, Community Park Baseball Complex Phase 2 renovations proposed contract requires additional funding; and

WHEREAS, funding for the additional budgeted expenditures of \$1,068,632 is available in unassigned fund balance;

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

1. The above "Whereas" clauses are true, correct, and incorporated herein by reference.

2. The City Council authorizes a budget amendment to line item 30.603.572.6015, Community Park Baseball Complex Phase 2, for \$1,068,632 in additional budgeted expenditures funding from the General Fund, unassigned fund balance.

3. 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 2nd day of March, 2022.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Quaremba
Purdon
Carr
Corrie

Gibson
Forbes
Steinmeyer

Date filed with City Clerk: _____



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

CITY COUNCIL WORKSHOP MINUTES

February 16, 2022
4:00 p.m.

1. Call to Order:

Mayor Rick Steinmeyer called the workshop to order at 4:00 p.m.

2. Roll Call

Mayor Steinmeyer, Council Members Amy Quaremba, Laura Carr and Chris Corrie were in attendance. Council Member Fred Forbes arrived at 4:07 p.m., and Council Member Mike Gibson arrived at 4:10 p.m. Council Member Jesse Purdon was not in attendance.

3. Staff Presentation on Transportation Capital Improvement Projects

Matt Feeney, Assistant City Manager, furnished a PowerPoint presentation on the transportation Capital Improvement Projects (copy in Clerk's file). He began with path and sidewalk projects underway, landscape and hardscape, and road network expansions, including the U.S 41 and Bonita Beach Road Quadrant Plan. He concluded by addressing FDOT's PD&E studies and scheduled public meetings for U.S. 41 and Bonita Beach Road. Staff's recommendation is to consider the gap of Old 41 and Paradise Road for major improvements in terms of multi-use paths, landscaping, and facilities.

4. City Council Discussion

In response to Council Member Corrie's concern regarding truck traffic downtown on Old 41, Assistant City Manager Feeney advised that staff has consultants preparing for the annual traffic counts in which the consultant will gather classification data (data re: trucks) through the Old 41 corridor. In response to Council Member Carr, Assistant City Manager Feeney stated that FDOT will be reviewing intersections for possible signalization along Old 41 south of Bonita Beach Road.

City Manager Hunter requested direction on the recommendations Staff made regarding next steps so budget items can be created in the next CIP. Mayor Steinmeyer would like to prioritize the area of Old 41, north of Terry Street, up to Rosemary.

Council Member Quaremba stated she is in favor of completing the interconnections shown on the plan, and staff to recommend timing. Assistant City

Manager Feeney explained that Dean Street is in the long-range plan, and he presented Shangri-La Road and Pennsylvania for incorporation into the long-range plan. Council Member Carr agreed with the recommendation.

City Manager Hunter advised that the next workshop will discuss Parks & Recreation projects, and will be held at 4:00 p.m. on March 2, 2022.

Additionally, City Manager Hunter requested a future workshop to discuss pay ranges for all employees. Council concurred with the request. In response to Council Member Quaremba, City Manager Hunter stated that all Department Directors will be providing an update on their CIPs. Lora Taylor, Communications Director, will be providing an update on communications and City facilities, and will incorporate special events. Additionally, staff will prepare a workshop dedicated to stormwater projects as well.

5. Public Comment: None

6. Adjournment

There being no further items to discuss, the workshop adjourned at 4:55 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

February 16, 2022
5:30 p.m.

1. Call to Order

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

2. Invocation:

Rabbi Mendy Greenberg furnished the invocation.

3. Pledge of Allegiance

At the request of Mayor Steinmeyer, John Dulmer led in the Pledge of Allegiance.

4. Roll Call:

Mayor Steinmeyer and all Council Members were in attendance, except for Council Member Jesse Purdon, who participated via telephone.

Mayor Steinmeyer entered a motion to allow Council Member Purdon to participate via telephone; Council Member Laura Carr seconded; and the motion carried unanimously.

5. Approval of Agenda

6. Mayor's Welcome

7. Public Comment on Agenda Items: None

8. Zoning and Land Use Items:

- A. PUBLIC HEARING TO CONSIDER A PETITION FOR A REQUEST TO VACATE, ABANDON, CLOSE AND DISCONTINUE THE PUBLIC'S INTEREST IN THE EASTERLY 3' OF SPRINGS LANE, AS SET FORTH IN INSTRUMENT NUMBER 2020000191757, AS RECORDED WITH THE CLERK OF THE COURT IN THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA, AND PROVIDING AN EFFECTIVE DATE. (Green Sheet No. 22-02-029)

Jay Sweet, Community Development, furnished an overview of the request and stated that staff does not object to the vacation, which is located at a dead end and does not affect anyone's access.

Council Member Mike Gibson motioned to approve; Council Member Laura Carr seconded; and the motion carried unanimously. **ADOPTED RESOLUTION NO. 22-14**

B. PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, PROVIDING FOR ADOPTION OF COMPREHENSIVE PLAN AMENDMENTS TO CREATE THE PROPERTY RIGHTS ELEMENT AS REQUIRED BY STATE LAW; AND FURTHERMORE DIRECTING TRANSMITTAL OF THE AMENDMENTS TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING FOR INTENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet No. 22-02-028)

Jackie Genson, Community Development, provided a Powerpoint presentation (copy in Clerk's file) to address the amendment for purposes of creating the Property Rights element. The intent today is to adopt the ordinance.

No public comments were made.

Council Member Laura Carr motioned to approve; Council Member Mike Gibson seconded; The motion carried unanimously. **ADOPTED ORDINANCE NO. 22-01**

9. Proclamations and Presentations:

A. Presentation regarding amendments to the City's Flood Hazard Reduction Ordinance and direction to staff. (Green Sheet No. 22-02-032)

Ayita Williams Lonergran, Floodplain Manager, provided a PowerPoint presentation (copy in Clerk's file) regarding the City's Flood Hazard Reduction Ordinance. Council consensus to increase the adjustment factor from the variable rate (15%) to a standard 20% for structure value determinations. A draft ordinance will be brought back with revisions for consideration by City Council.

5:46 p.m.

10. Consent Agenda:

Council Member Amy Quaremba motioned to approve the Consent Agenda; Council Member Laura Carr seconded; and the motion carried unanimously.

- A. Adopt Resolution approving the City's participation in the multijurisdictional Program for Public Information. (Green Sheet No. 22-02-022) **ADOPTED RESOLUTION NO. 22-15**
- B. Approve the amendment of the lease agreement with Kristin Pimentel for the use of Artist Cottage #1 for another one-year term. (Green Sheet No. 22-02-026)
- C. Authorize Mayor to sign the Resolution to approve the Selection Committee's recommendation to engage ten firms for the City's Miscellaneous Outdoor Recreation Facility Design & Engineering Services CN 21-20. (Green Sheet 22-02-027) **ADOPTED RESOLUTION NO. 22-16**

11. Mayor and Council Member Items:

- A. Discussion regarding potential assistance from the City towards this year's Bonita Blues Festival event. (Laura Carr; Green Sheet No. 22-02-023)

Council Member Carr provided an overview of this request for potential assistance from the City towards this year's Bonita Blues Festival. Kevin Barry, Founder of Blues Festival, was in attendance to address City Council. Discussion ensued.

Council Member Quaremba asked for a future discussion on the City's policy towards special events.

Council Member Quaremba motioned to authorize \$10,000 to the Bonita Blues Festival and to have staff come back with a recommendation as to the funding source. Council Member Carr seconded. The motion to approve carried unanimously.

- B. Receive a briefing paper from the Technology Advisory Board regarding public EV charging stations. (Chris Corrie; Green Sheet 22-02-030)

Council Member Corrie provided an overview and stated that the Technology Advisory Board (TAB) is asking for Council to accept the briefing paper recommending that the City Council pursue public access to electric vehicle charging stations.

John Polidian, a Board Member of TAB, was present to address City Council and explained that TAB is not asking for money, but requesting that City Council endorse a task force to bring charging stations to Bonita Springs. Discussion ensued.

Mayor Steinmeyer asked for the TAB's Chairman to return to Council with more information, and Council Member Forbes requested that Don Scott, Executive Director of the Lee County MPO, attend a future meeting to present to Council on this topic.

12. City Attorney's Items:

City Attorney Rooney provided notice that the Supervisor of Elections has advised of a July deadline for any referendum item for the November 8th election.

13. City Manager's Items:

- A. Presentation and review of the Preliminary 2020-2021 Fiscal Year End Financial Report. (Green Sheet No. 22-02-017)

Lisa Roberson, Finance Director, furnished a PowerPoint presentation (copy in Clerk's file).

- B. Presentation and review of the December and November Financial Report. (Green Sheet No. 22-02-025)

Lisa Roberson, Finance Director, furnished a PowerPoint presentation (copy in Clerk's file).

- C. Appoint a Council representative to occupy an ex-officio non-voting seat on the Lee County Tourist Development Council (TDC). (Green Sheet No. 22-02-031)

Council Member Carr motioned that Council Member Gibson continue as the City's representative to the TDC; Council Member Corrie seconded; and the motion carried 6-1 (Mayor Steinmeyer opposed)

Additional Items:

City Manager Hunter advised of the redistricting public workshop scheduled for February 17, 2022, and a Council workshop to begin at 4:00 p.m. on March 2, 2022. She next provided an update that the Bonita Springs Fire Control & Rescue District Union has committed to do the Fourth of July parade traditional format in the morning, and therefore, staff will proceed with the traditional format in the evening for the City's event.

14. Mayor and Council Member Reports

Council Member Forbes first reported on the Town Hall meeting held at the First Presbyterian Church with Congressman Byron Donalds. He next asked that staff contact the Property Appraiser's Office to receive information regarding the PACE programs and report back.

Council Member Quaremba advised of an opportunity to highlight the City in this year's Bonita Film Festival. Council consensus for Council Member Quaremba to work with staff to prepare a short video. Council Member Quaremba next read a statement she prepared in regard to Rabbi Greenberg and the inspiring messages he expressed at the Sheriff's press conference. Council consensus to allow her to work with staff to prepare a letter to Rabbi Greenberg to express the City's support to him and the community and to inform him that the City remains part of the solidarity movement. She next reported on the Estero Bay Challenges and Solutions meeting and

commended Assistant City Manager Feeney for representing the City. She also reported on the Art in Public Places Board meeting and the Horizon Council meetings she attended. She stated that on February 25th there will be a general membership event at the Horizon Council where they will be hosting a national flood insurance panel and suggested that the City's Floodplain Manager attend. She also addressed a letter from Holly Smith regarding Senate Bill 2508 and a concern that the funding proposed by the State legislature circumvents those two years of mediation done to adjust the LOSOM.

Council Member Carr reported on the Town Hall meeting with Congressman Donalds and thanked Governor DeSantis for standing strong for Floridians.

Mayor Steinmeyer also thanked Governor DeSantis for our booming economy.

Council Member Corrie commented disapprovingly on Senate Bill 2508. He next commented on the Governor's Resiliency program's funding for which Lee County has applied, which will hopefully result in improvements to the erosion on Bonita Beach.

Council Member Forbes reported on two bills in legislation to regulate smoking in public places.

15. Approval of the Minutes: February 2, 2022

Council Member Forbes motion approval of the Minutes; Council Member Corrie seconded; and the motion carried unanimously.

16. Public Comment: No comments were made.

17. Adjournment

There being no further items to discuss, the meeting adjourned at 7:05 P.M.

Respectfully submitted,

Debra Filipek, City Clerk

APPROVED:
CITY COUNCIL

Date: _____

AUTHENTICATED:

Mayor Rick Steinmeyer