

NOTICE OF PUBLIC MEETING
CITY COUNCIL
CITY OF BONITA SPRINGS
OFFICIAL AGENDA
WEDNESDAY, NOVEMBER 18, 2020
9:00 A.M.

**BONITA SPRINGS FIRE CONTROL AND RESCUE DISTRICT
27701 BONITA GRANDE DRIVE
BONITA SPRINGS, FL 34135**

To submit your public comment in writing, please email the City at CITYMEETINGS@CITYOFBONITASPRINGS.ORG Any written public comment must be received by 12:00 P.M. on November 4, 2020.

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

1. Swearing-in ceremony of recently-elected Mayor, Rick Steinmeyer; and City Council Members for District Two, Jesse Purdon; District Four, Chris Corrie, and District 6, Fred Forbes.
2. Call to order
3. Invocation:
4. Pledge of Allegiance
5. Roll Call
6. Public Comment on Agenda Items
7. Zoning and land use items:

Second reading and public hearing of the following Zoning Ordinance:

- A. A Zoning Ordinance of the City of Bonita Spring amending the existing zoning for the Channel 30 Commercial Planned Development; amending the height and number of stories, increase the square footage of the modular communication buildings, and removal of the caretakers quarters, amending the Master Concept Plan, and amending the Schedule of Deviations; on 6.11 +/- acres along the north of the Collier County line, east of the Seminole Gulf railway, and west of Mediterra Residential golf course; and providing for an effective date. (Greensheet No. 20-11-349)

Short recess, if needed.

8. Consent Agenda: (Note: Items on the Consent Agenda will be considered as one unless a specific item is removed by a Council Member for separate discussion.)
 - A. Approve Resolution of the City of Bonita Springs, Florida; confirming the results of the Lee County Canvassing Board in conjunction with the November 3, 2020 election. (Greensheet No. 20-11-351)
 - B. Approve Budget Resolution to transfer FY 2020 budgets among accounts and to adjust the budgets of certain revenue, other sources and expenditure accounts. (Greensheet No. 20-11-345)

- C. Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates, Inc., for stormwater design of Spring Creek/Bonita Springs Golf Course Flood Improvement Project. (Greensheet No. 20-11-348)
- D. Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates, Inc. for stormwater design of Logan Boulevard Regional Floodway Drainage Project. (Greensheet No. 20-11-347)

- OPPORTUNITY FOR CITY COUNCIL COMMENTS ON CONSENT AGENDA ITEMS

9. Proclamations and Presentations:

- A. Update by Capitol Strategies on the 2021 Legislative Session and discussion of the City's Legislative Priorities. (Greensheet No. 20-11- 354)
- B. Receive update by Waldrop Engineering, agent for DeFoor Allison Trust for Bonita Preservation Trust (property owner of the Shangri-La), for their master planning efforts as identified in the compliance agreement between the property owner and the City of Bonita Springs. (Greensheet No. 20-11-352)

Short recess, if needed.

10. Mayor and Council Member Items:

11. Public comment:

Short recess, if needed

12. City Attorney's Items:

- A. Consistent with Resolution No. 10-57 creating the Administrative Code which establishes the Code of Conduct for its Elected Officials, confirmation of receipt of Code of Conduct. (Greensheet No. 20-11-346)
- B. Consistent with the City Charter and the Code of Conduct for its elected officials, elect a Deputy Mayor. (Greensheet No. 20-11-350)
- C. Provide direction regarding the contents of the Letter of Interest for the sale and development of the Levin lot. (Greensheet No. 20-11-353)

13. City Manager's Items:

- A. City's COVID-19 update.

14. Mayor and Council Member Reports:

15. Approval of Minutes: 09/16/20

16. Public Comment:

17. Adjournment.

ANY PERSON REQUIRING SPECIAL ACCOMMODATIONS AT ANY OF THE MEETINGS BECAUSE OF A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT MEG WEISS, DIRECTOR OF 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.

NOTE: AGENDAS AND AGENDA PACKETS ARE AVAILABLE FOR VIEW, AND THE MEETING CAN BE VIEWED AT <http://www.cityofbonitasprings.org/cms/one.aspx?pageId=13788697> THIS MEETING IS TELEVISED ON COMCAST CHANNEL 98. YOU MAY ALSO VIEW THE MEETING ON HOTWIRE CHANNEL 398; CENTURY LINK/PRISM TV CHANNEL 87; AND SUMMIT BROADBAND CHANNEL 96.

NEXT MEETING: 12/02/20

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-349
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Second reading and public hearing of the following Zoning Ordinance: A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS AMENDING THE EXISTING ZONING FOR THE CHANNEL 30 COMMERCIAL PLANNED DEVELOPMENT; AMENDING THE HEIGHT AND NUMBER OF STORIES, INCREASE THE SQUARE FOOTAGE OF THE MODULAR COMMUNICATION BUILDINGS, AND REMOVAL OF THE CARETAKER'S QUARTERS, AMENDING THE MASTER CONCEPT PLAN, AND AMENDING THE SCHEDULE OF DEVIATIONS; ON 6.11 +/- ACRES ALONG THE NORTH OF THE COLLIER COUNTY LINE, EAST OF THE SEMINOLE GULF RAILWAY, AND WEST OF MEDITERRA RESIDENTIAL GOLF COURSE; AND, PROVIDING FOR AN EFFECTIVE DATE.			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Jacqueline Genson, AICP Planning and Zoning Manager	
☐ CONSENT	☐ ORDINANCE		
☒ PUBLIC HEARING	☐ ADMIN. CODE		
☐ MAYOR AND COUNCIL MEMBER ITEMS	☒ OTHER: ZONING ORDINANCE		
☐ MAYOR AND COUNCIL MEMBER'S REPORTS			
☐ CITY ATTORNEY ITEMS			
☐ CITY MANAGER ITEMS			
BACKGROUND: The case was heard by the Zoning Board on October 20, 2020 2020 with a recommendation to approve the request (7-0). The Zoning Board recommendation also included direction to for Staff to work with Applicant on Conditions 3a (uses), 5e (screening), 7g (BSU), and 9f (guywires). Staff has also added additional language to Condition 4 (central sewer and septic). These changes are identified in yellow highlight for your ease of review. The Applicant and Staff agree with these changes and the DRAFT zoning ordinance included herein. This is the second reading and public hearing of a Zoning Ordinance for the Channel 30 CPD Amendment request. The first reading in front of City Council occurred on November 4, 2020 where the motion to move the case to second reading was approved. To conserve paper and resources, the full staff report packet with Attachment's A and B will be viewable online only with the full agenda packet. Please contact the Clerk's Office for paper copy requests			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☐ YES ☒ NO IF YES, WHICH STRATEGIC OBJECTIVE?			
STAFF RECOMMENDATIONS: See attached Agenda Item Packet.			
REVIEWED BY: City Manager: <u>Arleen Hunter</u> City Attorney: <u>Derek Rooney</u> City Clerk: <u>Debra Filipek</u> Department Director: _____			
COUNCIL ACTION: ☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			



**City of Bonita Springs Board
for
Land Use Hearings & Adjustments and Zoning Board of Appeals
MINUTES
Tuesday, October 20, 2020
9:00 A.M.**

I. CALL TO ORDER

- Chairman Anthony Rascio called the meeting to order at 9:10 A.M.

II. INVOCATION

- Board Member Russ Winn furnished the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

- Members in attendance: Chairman Anthony Rascio, Board Member Richard Donnelly, Board Member Bruce Galloway, Board Member Gary Gambrell, Board Member Ben Hershenson, Board Member Kelly Macklin, Board Member Russ Winn.

V. SWEARING IN

- City Attorney Derek Rooney placed all witnesses under oath.

VI. APPROVAL OF MINUTES: September 15, 2020

- Chairman Anthony Rascio motioned for approval of the minutes; Board Member Russ Winn seconded; motion passed unanimously.

VII. PUBLIC HEARINGS

**EACH CASE WILL INCLUDE A PUBLIC COMMENT PERIOD AT THE CONCLUSION OF THE
APPLICANT AND STAFF PRESENTATION**

A. 9:00 A.M.

CASE NAME: PD18-54088-BOS CHANNEL 30 COMMERCIAL PLANNED DEVELOPMENT (CPD) AMENDMENT

REQUEST: A request to amend City of Bonita Springs Zoning Ordinance No. 09-14 to incorporate the following changes:

1. Modify the height and number of stories of the two buildings from five stories/60 feet and three stories/40 feet to both be four story buildings with a maximum height of 50 feet; and
2. Increase the square footage of the small modular communications buildings (MCBs) from the current 384 square feet remaining allocation to 1,384 square feet by eliminating the Caretaker's quarters from the current development plan.

LOCATION: 9930 CHANNEL 30 DRIVE, BONITA SPRINGS, FL 34135

- Jacqueline Genson, Community Development, provided a brief introduction of the proposal, initially filed in 2018. Stated the site was an active site. Applicant was found sufficient earlier this year in March but due to COVID-19, further meetings were postponed.

1. APPLICANT PRESENTATION

Presenters:

Timothy Sheehan, Super Towers Inc.
Stuart Rogers, Maser Consulting

- Timothy Sheehan, Super Towers Inc., provided presentation of the history, also discussed feedback. Applicant agreed to primarily focus on making the buildings less visible and removed one story, making the two buildings 4-story buildings. Felt commercial space was needed in Bonita Springs.
- Stuart Rogers, Maser Consulting, furnished a presentation of the Channel 30 CPD Amendment proposing two buildings to modify the height and number of stories. Phase 1 (south building) and Phase 2 (north building). Stated both buildings will be 4-story, less intense at 169,584 square feet, and decreasing overall size.
- Mr. Rogers provided views from both Mediterra and Cordova showing buildings were well buffered. Presented renderings of proposed buffer and plantings over 5 and 10 years. Previously approved deviations were shown, and new deviations were explained. Staff supported the new deviations with exception of Deviation 4. Applicant is looking to defer connection to central sanitary sewer until after Phase 2.
- Applicant has agreed to strike through a list of previously approved uses. Staff recommended Approval of Applicant with a reduction of uses and with conditions. Applicant would like wording amended for 5.e., 7.g., 9.f. Applicant asked for Condition 12 - Contractor and Builder Group III, 12.a. and 12.b. to be stricken.
- Board Member Gary Gambrel asked about location of the pump. The current and proposed site was provided by Mr. Sheehan. Board Member Kelly Macklin asked for clarification questioning if pump was in closer proximity to the golf course. Concerned about proximity to residential area. Mr. Sheehan stated the location was at least 500 feet from nearest home.

- Board Member Kelly Macklin asked if the Applicant was reducing the property line 20 feet. He and Applicant discussed the existing stormwater ponds and conditions. Board Member Ben Hershenson asked if consideration was given to stormwater runoff. Applicant stated they were going to enhance the lake and add additional stormwater area.
- Chairman Rascio stated concern for septic system and inquired what would occur if Phase 2 was not built out. Applicant stated the goal and intent was always to develop the north yard. Applicant stated an extremely low flow, low water usage as 8/10 toilets would be in the entire complex: no sinks or drains. Never had failure or flow problem.
- Board Member Russ Winn asked for any community feedback. Applicant stated they hosted a community meeting with Mediterra and Spanish Wells. No significant reaction, very positive reception.
- Board Member Bruce Galloway asked if Applicant had spoken to the Railroad regarding future use. He felt Applicant seemed to be relying on others to input buffers. Applicant had discussions and a right-of-way crossing agreement with the Railroad. Chairman Rascio asked if track was active, and Mr. Sheehan stated Railroad maintained track to be active.
- Board Member Gary Gambrel asked for clarification of Condition 12.b., which Ms. Genson responded and explained the process used for that condition. She stated they wanted to be sure that if property ownership changed, and with Zoning running with the land, it would be an appropriate compromise.
- Board Member Hershenson and Board Member Macklin asked to have the elimination of uses process explained. John Dulmer stated that Ms. Genson would explain during the Staff report.
- Board Member Richard Donnelly asked regarding the entrance road modifications, if Applicant was familiar with the work that must be done in Phase 1. Mr. Rogers explained the traffic study upon approval would dictate the improvements required on Old 41.

2. STAFF REPORT

- Jacqueline Genson, Community Development, provided the Staff presentation via PowerPoint (copy in Clerk's file). Staff recommended approval with conditions to modify the height and square footage of the building. Ms. Genson reviewed the request to modify the Master Concept Plan. Area of minor concerns on Condition 12. and Existing Uses were outlined.
- Ms. Genson addressed Schedule of Uses. Board at the time had concerns there were too many uses (from 2009). Staff looked at uses and revaluated uses in order to observe if the use could really evolve on the property.
- City Attorney Rooney gave instruction to the new Board Members as to appropriate considerations and the criteria they needed to follow. The Board was also free to make recommendations.
- Chairman Anthony Rascio inquired if the Board may approve request but send questions back to Community Development to further negotiate with Applicant. City Attorney responded in the affirmative. Board Member Hershenson felt the requirements of the deviation had been justified. He supported what Staff recommended.

- Chairman Rascio recommended the Applicant and Staff sit down and iron out differences with respect to the conditions. They were better equipped to accomplish than the Board.
- Board Member Gambrel asked the cost of connecting to City sewage. Mr. Sheehan shared the approximate cost was 250K to 300K. He stated extensive drainage would be put into the site to handle stormwater drainage.
- Chairman Anthony Rascio opened meeting to Public Comment, seeing none, voting commenced.
- Item A - Board Member Richard Donnelly entered a motion to approve the rezoning request consistent with the City of Bonita Springs Comprehensive Plan and findings of Staff; Items 5.e., 7.g., 9.f., 12.a. and 12.b. are subject to further negotiation with Staff and Applicant. Board Member Ben Hershenson seconded; the motion carried unanimously.

RESULT:	PASSED [7-0]
MOTION BY:	Richard Donnelly, Board Member
SECOND BY:	Ben Hershenson, Board Member
AYES:	Rascio, Donnelly, Galloway, Gambrel, Hershenson, Macklin, Winn
NAYS:	None

- Board Member Richard Donnelly discussed the current changes to the Board. The Board further addressed the process for the Zoning Board, and the City Attorney suggested a workshop to address the Board's role.

VIII. ADJOURNMENT

- There being no further items to discuss, the meeting was adjourned at 11:30 A.M.

Respectfully submitted,

Laurie K. Hamm, Recording Secretary

APPROVED:

BONITA SPRINGS ZONING BOARD:

Date: _____
AUTHENTICATED:

Chairman Anthony Rascio

CITY OF BONITA SPRINGS
ZONING ORDINANCE NO. 2020 -

A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS AMENDING THE EXISTING ZONING FOR THE CHANNEL 30 COMMERCIAL PLANNED DEVELOPMENT; AMENDING THE HEIGHT AND NUMBER OF STORIES, INCREASE THE SQUARE FOOTAGE OF THE MODULAR COMMUNICATION BUILDINGS, AND REMOVAL OF THE CARETAKER'S QUARTERS, AMENDING THE MASTER CONCEPT PLAN, AND AMENDING THE SCHEDULE OF DEVIATIONS; ON 6.11 +/- ACRES ALONG THE NORTH OF THE COLLIER COUNTY LINE, EAST OF THE SEMINOLE GULF RAILWAY, AND WEST OF MEDITERRA RESIDENTIAL GOLF COURSE; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, a petition has been submitted by Super Tower, Inc., requesting to amend an existing City of Bonita Springs Zoning Ordinance No. 09-14 as subsequently amended in City of Bonita Administrative Amendments ADD13-05141- BOS, ADD16-26594-BOS, and ADD18-53020-BOS to modify the allowable height and number of stories of the two proposed buildings from five stories (60 feet) and three stories (40 feet) to be four story buildings with a maximum height of 50 feet and to increase the allowable the square footage of the small modular communications buildings (MCBs) from the current 384 square feet remaining allocation to 1,834 square feet for a property located at 9930 Channel 30 Drive, Bonita Springs, Florida 34135 described more particularly in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, a Public Hearing was advertised and heard on October 20, 2020, by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") on Case PD18-54088-BOS which recommended approval unanimously, 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 interested parties. The October 13, 2020 Staff Report prepared by Community Development and evidence submitted at the Zoning Board hearing, as part of the City Council hearing record, are on file with the City Clerk.

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

SECTION ONE: RECITALS

The forgoing recitals are true and correct and are incorporated herein by this reference.

SECTION TWO: APPROVAL OF REQUEST

The City Council hereby approves Petition PD18-54088-BOS Channel 30 CPD to modify the height and number of stories of the two new buildings and increase

the square footage of the small modular communications buildings (MCBs) on the subject property, subject to the following conditions

Conditions:

1. All conditions of City of Bonita Springs Zoning Ordinance No. 09-14 and City of Bonita Administrative Amendments ADD13-05141-BOS, ADD16-26594-BOS, and ADD18-53020-BOS ((Exhibit "C")) remain in full force and effect, unless specifically amended herein.
2. Condition 1 of Zoning Ordinance (ZO) 09-14 is hereby amended for the development of this project. The development shall be generally consistent with the Master Concept Plan stamped received September 29, 2020, and titled "Super Towers, Inc." prepared by Maser Consulting, P.A., and attached hereto (Exhibit "B").

The development is limited to the two existing communication towers, ancillary equipment and 1,834 square feet of modular communication buildings; 169,584 square feet of building floor area, with the amount of commercial uses limited to 46,866 square feet with the remaining floor area to be utilized for a self-storage/mini-warehouse facility.

3. Condition 2 of ZO-09-14 is hereby amended for the development of this project. The limits apply to the project and uses:

a. Schedule of Uses

Animals:

Clinic

Kennel (indoor)

Control center (including Humane Society, indoor only)

~~Auto Parts Store~~

Automotive Repair and Service (Group I & II)

Boat storage, dry, not exceeding 18 feet above grade

Boat storage, dry, exceeding 18 feet above grade (vertical stacking of boats is prohibited)

Broadcast studio, commercial radio and television

Building material sales

Business Services (Group I & II)

~~Bus station/depot~~

Caretaker's residence

Caterers

Cleaning and maintenance services

Communication tower:

100 feet or less in height

Over 100 feet in height (existing only)

Contractors and Builders Groups I, II, and III (subject to Condition 12)

Entrance gates and gatehouse

Essential Services facilities (Group I)

Excavation, Water Retention

~~Farm equipment, sales, storage, rental, service~~

~~Feed or fertilizer, mixing and sales~~

~~Freight and cargo handling establishments~~

~~Laundry or Dry Cleaning (Group I & II)~~

~~Lawn and Garden Supply Store~~

~~Manufacturing, repair or wholesale sales of:~~

~~Apparel~~

~~Electrical machinery and equipment~~

~~Fabricated metal products (Group II)~~

~~Food and Kindred products (Group III)~~

~~Leather products (Group II)~~

~~Lumber and wood products (Groups II)~~

~~Measuring, analyzing and controlling instruments~~

~~Novelties, jewelry, toys and signs (Group II)~~

~~Rubber and plastic products (Group II)~~

Non-store retailers, (all Groups)

Paint, glass and wallpaper

Pet services

~~Pet shop~~

~~Plant nursery~~

Post Office

Printing and publishing

Processing and warehousing

Rental or Leasing Establishments (Group I, II & III)

Repair Shops (Group I, II & III)

Research and development laboratories (Groups II and IV)

~~Residential accessory uses~~

Retail and wholesales, when clearly incidental and subordinate to a permitted use on the same premises

Signs in accordance with Chapter 6

Storage:

Indoor

Storage, open (limited to issuance of a building permit for Phase 2 construction of Building #1)

Studios

Temporary uses

~~Transportation services (Group II)~~

~~Vehicle and equipment dealers (Group I & II)~~

Warehouse:

Mini-warehouse

Private

Public

~~Wholesale establishment (Groups I & III)~~

b. Site Development Regulations

Minimum Area Dimensions:

Lot Area: 6.109 ± acres
Lot Depth: As shown on MCP
Lot Width: As shown on MCP

Minimum Building Setbacks:

Road / ROW: 20 feet
Front: 25 feet
Sides (East): 25 feet*

Rear (South): 25 feet**
Waterbody: 25 feet
Preserve: 25 feet

Maximum Building Separation: 25 feet

Maximum Building Height: Building 1: ~~60~~ 50 feet / ~~5~~ 4 stories
Building 2: ~~40~~ 50 feet / ~~3~~ 4 stories
Building 3: 15 feet / 1 story
Building 4: 15 feet / 1 story

Maximum Lot Coverage: 40%
Minimum Open Space: 20%

*Buildings 1 and 2 with 30 feet side setback; MCPs with 8 feet side setback.

** Building 2 with 25 a foot setback.

4. Potable water and Sanitary Sewer Systems. Condition 24 of ZO-09-14 is hereby amended for the development of this project.

~~The property will be required to water and sewer hook-up prior to certificate of completion when the flow generated to the septic drain bed exceeds 3,200 square feet capacity for the drain bed.~~

At time of local development order approval for construction of Building #2 in Phase 1, the Developer shall obtain the necessary approvals for the ability to connect all new and existing buildings to the central water system. If Building #1 in Phase 2 is constructed, the wastewater flow from the entire project shall connect to the central sanitary sewer system. In no instance may flow from Building #2 exceed 1,600 square feet capacity for the drain bed.

5. Architectural.

- a. Final architectural approval by the City Architect will be required prior to local development order approval. This review and approval shall be consistent Chapter 3 and 4 of the City of Bonita Springs Land Development Code; and

- b. At time of local development order, the architect of record should demonstrate that the upper portions of the primary facades delineate the surfaces with geometric patterns, vertical and/or horizontal, in the stucco finish. Or, provide the upper façade with a change in material as well. The architect may also add more horizontal glazing to reduce the visual impact of these buildings; and
 - c. The architect should use vertical trellis for climbing landscape plant material to equal not more than 30% of the total area; and
 - d. Deviation 5 is approved to allow the installation of a wall/berm combination, not less than eight feet in height, and located a minimum of 15 feet from the property line. The exterior side of the wall must be planted with a double-staggered hedgerow no less than 48 inches at the time of planting and maintained at 60 inches within two years of planting, in addition to five trees per 100 linear feet; and
 - e. At time of local development order, the Applicant may utilize additional landscaping and/or screen walls to screen the overhead doors. Screening shall be a minimum height of 90 percent of the overhead door height, or a landscape buffer achieving 75 percent opacity within one year. The placement and length of these screening devices shall ~~block the view of the overhead doors from the street or from any residually used properties~~ conform to the locations shown on the approved MCP, subject to additional landscaping if necessary to hide the doors.
6. Signage. Any building wall signage facing residually zoned property shall be non-Illuminated.
7. Environmental
- a. Prior to local development order approval, a tree survey shall be required when appropriate, to determine if the site contains Heritage Trees. If the site contains Heritage Trees and the trees are proposed for removal, an appearance before the Tree Advisory Board prior to the issuance of a development order is required.
 - b. All plants which are on the *Florida Exotic Pest Plant Counsel's List of Category 1 Invasive Plant Species* shall be removed from the project area, including conservation, open space and developed areas. The site shall be maintained free of plants on the latest Florida Exotic Pest Plant Counsel's List of Invasive Plant Species, Category 1 list in perpetuity.
 - c. Prior to local development order approval, development order plans must depict the preserve area as "Gopher Tortoise Preserve", and any gopher tortoises found on site shall be placed into this preserve. If the amount of tortoises exceeds the FFWCC guidelines for the preserve area, the "extra" tortoises may be

relocated offsite by obtaining a Florida Fish and Wildlife Conservation Commission (FFWCC) relocation permit. The applicant must first seek approval for preservation of gopher tortoises in place before pursuing off-site relocation options. Any gopher tortoises and commensal species found during burrow excavation must be moved to preserves containing suitable gopher tortoise habitat as approved by the Florida Fish and Wildlife Conservation (FFWCC).

- d. A conservation easement shall be placed on the 0.653± acre environmentally sensitive pine flatwood with xeric oak community to preserve it in perpetuity. The conservation easement shall be dedicated to the City of Bonita Springs with no responsibility for maintenance.
 - e. A Twisted Air Plant, which is listed by the Florida Dept. of Agriculture as Threatened shall continue to be protected by preserving a 10' buffer around the staggerbush shrub which the plant is growing on.
 - f. A listed species and preserve area management plan shall be submitted for review and approval with the next development order. The management plan shall address all requirements per LDC Sec. 3-417(e) – Indigenous preserve management plan, including but not limited to the Twisted Air Plant, the gopher tortoises, signage, and exotic plant and animal species control in the preserve area.
 - g. The utility easement along the western side of the Gopher Tortoise preserve shall remain at the same grade as the preserve and consist of underground utilities. After completion of the underground utilities, this area shall be planted with gopher tortoise friendly xeric plants. A minimum of 6 different native plant species shall be used (three different shrubs and three different groundcovers). Shrubs shall be planted on 5' centers and groundcover massings shall be planted on 1' centers. Appropriate plants shall consist of gopher apple, wiregrass, butterfly peas, gall berry, prickly pear cactus, and paw paw, **unless any of these species are objectionable to Bonita Springs Utilities.** A planting plan shall be submitted to the Community Development Department for review and approval.
 - h. An eight (8) foot setback from the adjacent preserve/ wild land area shall be allowed for the Modular Communication Buildings (MCBs).
8. Landscaping and Buffering
- a. Utilization of one hundred (100) percent native vegetation planting within all required landscaping, restoration, creation, and enhanced preservation areas. The applicant may install non-

native plantings for accent above the required plantings in landscaped areas only; and

- b. All required landscaping for the Type "A" buffer will be placed in the 2.5-foot buffer on the northern side of the FP&L easement and will be maintained to prevent encroachment; and
- c. Buffers shall be provided as shown on the MCP and as described by deviations.

9. Engineering.

- a. At time of local development order, the developer must obtain the necessary approvals from the railroad for the reconfiguration of the existing lake. Furthermore, the railroad will be required to be a co-applicant on the SFWMD ERP application; and
- b. In support of Deviation 8, at time of local development order, the developer shall incorporate bank stabilization materials, such as geoweb or comparable materials, that will prevent erosion of the lake bank due to the increased slope; and
- c. At time of local development order, the developer shall submit a lake maintenance plan that defines appropriate and adequate maintenance areas. Said plan shall provide for perpetual maintenance in conformance with City standards; and
- d. At time of local development order, the use of gutters, downspouts and bubblers/yard drains may be required to properly channelize and direct runoff to a suitable outfall; and
- e. At time of local development order, the Applicant may be required to add some type of detectable material to the bottom portions of the guy wires to ensure pedestrian and drivers are aware of their locations. Furthermore, additional lighting may be required around these areas; and
- f. At time of local development order, the applicant shall be required to add the necessary protection for the existing guywires, which could possibly be impacted by various trucks that will traverse the site a clearance bar of 16' prior to entering the parking area associated to Building 1; and
- g. The Applicant is on notice that at time of local development Order, the Fire Department may require 20' width drive aisle around Building 1, meeting the currently adopted Florida Fire Prevention Code (FFPC) inclusive of the National Fire Protection Association (NFPA) for Fire Department access.

10. Bicycle and Pedestrian

- a. All required bicycle, pedestrian and multimodal facilities must meet or exceed the specifications set forth in LDC 3-263, 3-302, 3-303 and 3-491, as may be amended; as well as any applicable elements of the respective City of Bonita Springs Bicycle Pedestrian Master Plan [PATH] Bonita Beach Road Corridor Design Standards; and

- b. At time of local development order, the applicant shall provide a fee-in-lieu payment for, or construct, the required offsite bicycle, pedestrian and complete streets facility improvements along/within the Channel 30 Drive and Old US 41 as consistent with requirements of LDC 3-263, 3-302, 3-303, 3-491, City of Bonita Springs Bicycle Pedestrian Master Plan [PATH], as applicable.
11. Transportation Conditions
- a. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the City of Bonita Springs Land Development Code may be required to obtain local development order; and
 - b. The Developer must comply with concurrency requirements (all conditions required by the Bonita Springs Comprehensive Plan and the Land Development Code) to obtain a local development order; and
12. Contractor and Builder Group III
- ~~a. This use is limited to the existing Kelly Roofing tenant.~~
 - b. Fabrication work and the outdoor storage of earth moving equipment, cranes, concrete mixers, aerial lift equipment, and other similar heavy construction equipment are prohibited. **Light fabrication is permitted subject to the city noise ordinance.**
 - c. Boom trucks shall be stored with arms in a downward position.
 - d. The outdoor storage of equipment associated with this use shall cease prior to issuance of a building permit for Phase 2 construction of Building #1.
 - e. At time of local development order, the property owner shall designate an appropriate impervious area for Kelly Roofing to conduct their ancillary fleet repair. Proper BMPs shall be provided to demonstrate the method(s) of use, storage, and disposal of any hazardous materials, in addition to equipment to avoid and minimize spills and discharges, in accordance with all applicable regulations.
13. Parking. Any use that requires equipment and/or vehicle storage must demonstrate consistency with LDC Sec. 4-1732(3)c and cannot be parked in a required space.
14. This development is subject to conditions set forth herein and the rules, regulations laws and codes in place at the time of Development Order and Constructions Plan approval. Approval of this Planned Development is not a guarantee of future approvals.

Deviations:

The revised Master Concept Plan and LDC changes necessitate the need to re-evaluate Deviations 1-3 as approved in ZO-09-14. This amendment request includes four new deviations (Deviations 4 thru 7).

1. **Deviation No. 1:** Deviation to City of Bonita Springs LDC Chapter 3-418 (d)(3) and LDC4-2074(a)(2)(a) requiring a type “E” buffer (25 ft. wide with a wall and 30 shrubs/100 liner feet) or a type “F” buffer (25 ft. wide, no wall, double row staggered hedge) to permit a type “D” buffer, subject to the modular communication buildings locations. Deviation 1 is APPROVED subject to Condition 8.
2. **Deviation No. 2:** Deviation to City of Bonita Springs LDC Chapter 4-1732 requiring one (1) parking space per 1000 sf of floor area for Warehousing, Public or self-storage to provide for one (1) parking space per 3000 sf of floor area. Deviation 2 is APPROVED subject to Condition 21 of ZO-09-14 and Condition 12.
3. **Deviation No. 3:** Deviation to City of Bonita Springs LDC Chapter 3-416(D)(3) requiring a Type “A” buffer along the South property line to provide a type “A” buffer (5 ft. wide) along the south to permit a type “A” buffer encroaching 2.5 ft along the north side of the existing FPL easement. Deviation 3 is APPROVED subject to Condition 8.
4. **Deviation No. 4:** Deviation to City of Bonita Springs LDC Chapter 3-353 requiring a connection to the sanitary sewer system when building size exceeds 30,000 sf or estimated wastewater flow exceeds 5000 gpd. Staff recommends a revision to Condition 24 of ZO-09-14 should City Council wish to approve the deviation request. See Condition 4.
5. **Deviation No. 5:** Deviation to City of Bonita Springs LDC Chapter 3-490(b), 3-2074(b), and Division 36 of LDC 4 requiring a 25 ft set-back and 8 ft high wall to buffer the overhead doors in building #1 and outdoor storage to be covered with a structure architecturally consistent with the principal structures, to allow for a 15 ft set-back with Type D buffer planting requirements and 8-ft high masonry wall for that section of the west property line residing between the north end of the lake and the south end of the indigenous preserve and to eliminate the covered storage requirement. Deviation 5 is APPROVED subject to Condition 5.
6. **Deviation No. 6:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(6)(a) requiring habitable buildings to be set-back a minimum of 30 ft from “wildland” areas to reduce the set-back to 8 ft for Modular Communication Buildings (MCBs). Deviation 6 is APPROVED subject to Condition 8.
7. **Deviation No. 7:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(1)(a) requiring a minimum of 30-ft setback from indigenous native vegetation to habitable structures to reduce the set-back to 8 ft for Modular

8. **Deviation No. 8:** Deviation to City of Bonita Springs LDC Chapter 3-331(d)(4) requiring a 4:1 (H:V) maximum slope from the top of bank to a water depth of four feet below the dry season water table to allow for a steeper slope of 2:1 (H:V). Deviation 8 is APPROVED subject to Condition 9.

Corrie

Date filed with City Clerk: _____

Exh. 11-B-1

LEGAL DESCRIPTION

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY; SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT: A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

CONTAINING 6.109 ACRES.

SKETCH OF DESCRIPTION NOT A SURVEY

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE: 8.16.18

RECEIVED
CITY OF BONITA SPRINGS
OCT 10 2018
COMMUNITY DEVELOPMENT
DEPARTMENT

CECI GROUP SERVICES
COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@ceciff.com

CLIENT:

SUPER TOWERS INC.

TITLE:

SKETCH OF DESCRIPTION OF THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY; SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

DATE: 08/16/18 SCALE: 1" = 100'
DRAWN: MMW F.B. N/A
CHECKED: RJE PG. N/A
SEC. 3 TWP. 48S RNG. 25E
ACAD NO. 18.195
REF. NO. 18.195- BOUNDARY SKETCH

NO. DATE BY REVISION DESCRIPTION

SHEET 1 OF 2
FILE NO. 18.195

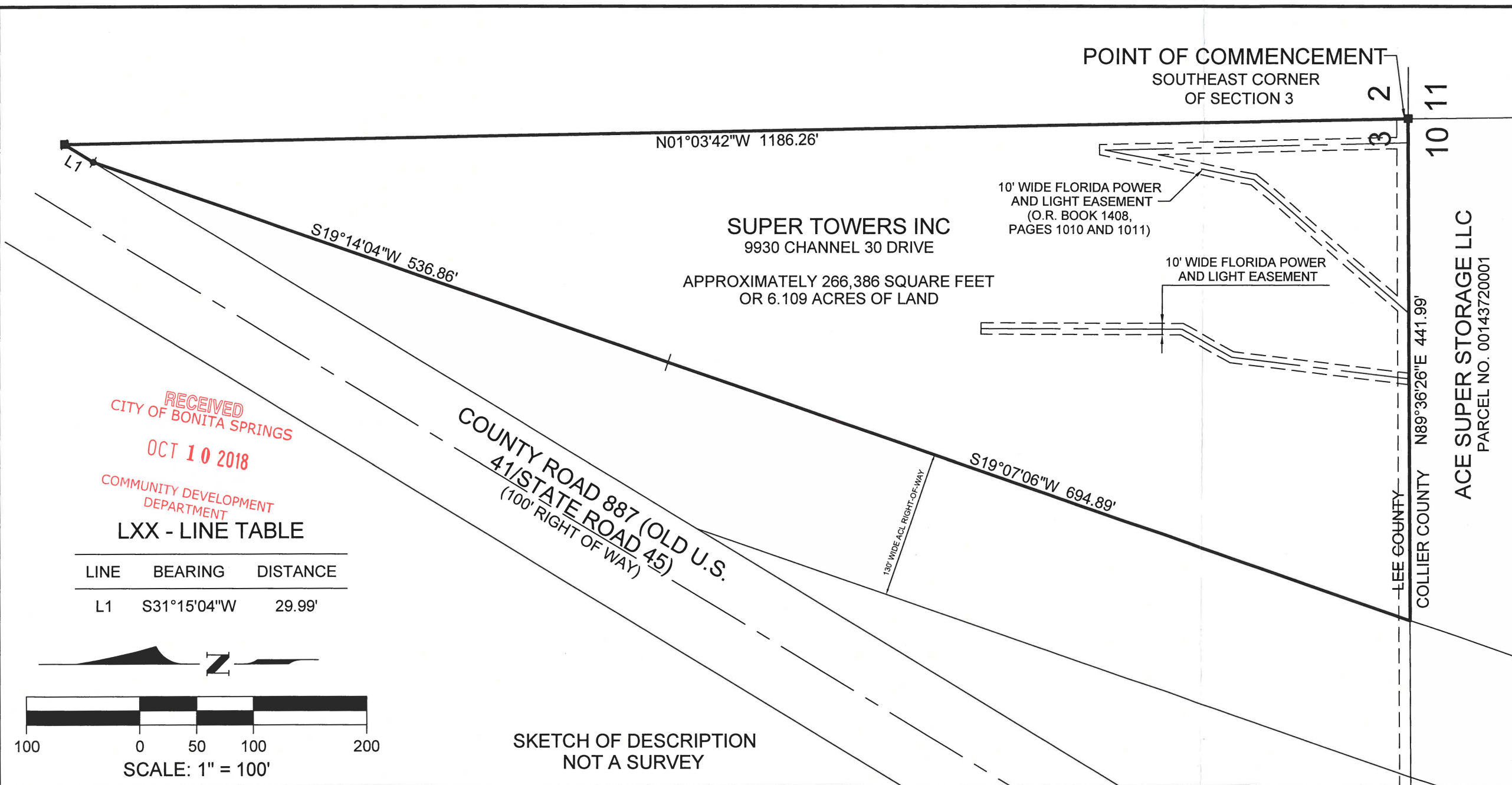


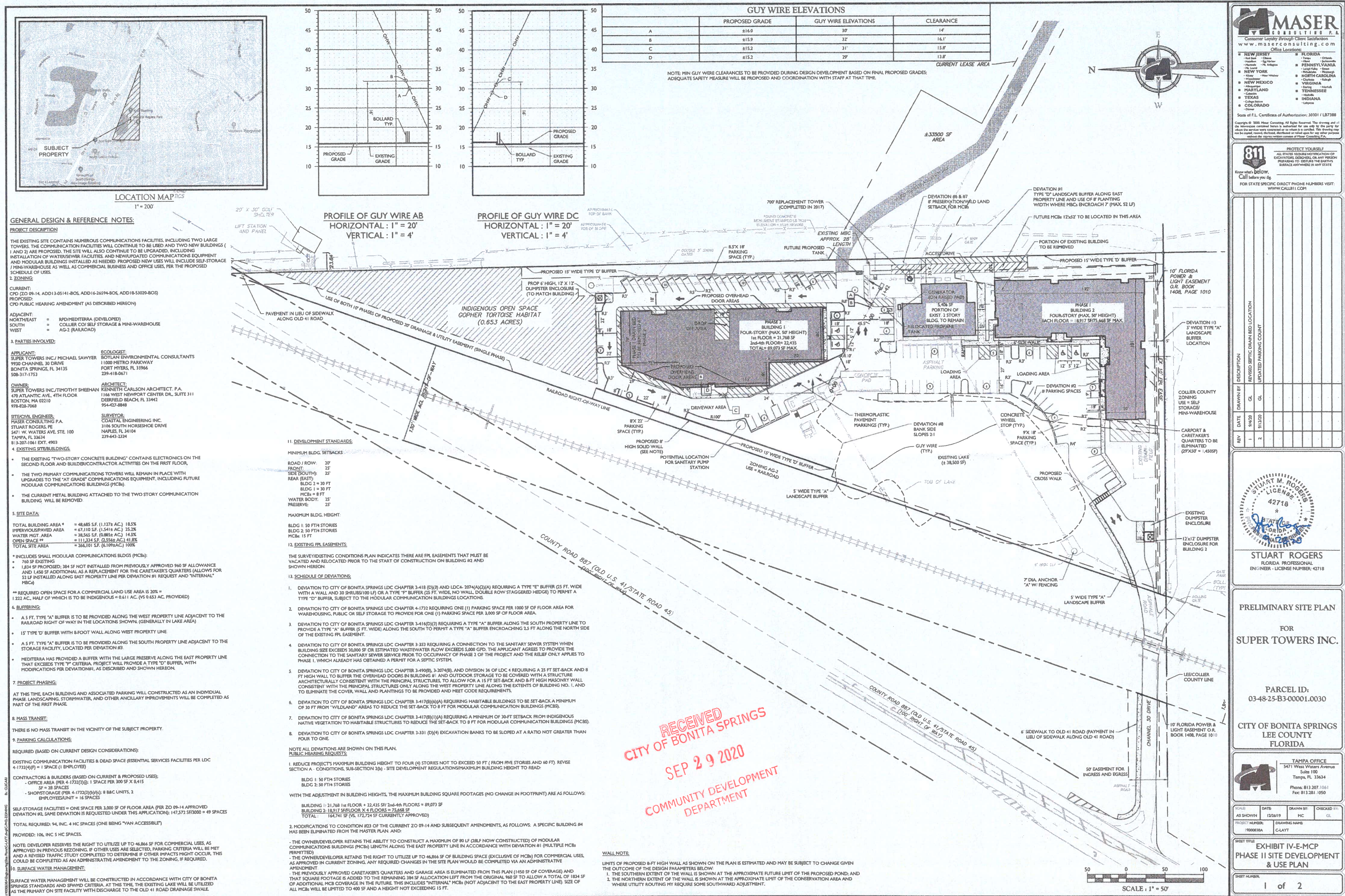
COASTAL
ENGINEERING
CONSULTANTS
INC.

A CECI GROUP COMPANY
Serving Florida Since 1977

3106 SOUTH HORSESHOE DRIVE
NAPLES, FLORIDA 34104

Exh. 11-B-2





CITY OF BONITA SPRINGS
ZONING ORDINANCE NO. 09-14

A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST BY CHANNEL 30 DRIVE COMMERCIAL CENTER TO REZONE FROM AGRICULTURAL (AG-2) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); ON LAND LOCATED AT 9930 CHANNEL 30 DRIVE, BONITA SPRINGS, FLORIDA, ON 6.11+/- ACRES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Channel 30 Drive Commercial Center has filed an application for rezoning 6.11 ± acres from Agricultural (AG-2) with Special Exception for a nursery to Commercial Planned Development (CPD) to allow for the existing communication towers and equipment (including the existing 4,470 SF building) to remain, the addition of two new modular communication buildings, the construction of up to 172,724 SF of building floor area and a caretaker's quarters. The building floor area will be utilized for up to 46,866 SF of commercial uses with the remaining space for a self-storage/mini-warehouse facility. Maximum building is five stories not to exceed 60 feet;

WHEREAS, the subject property is located at 9930 Channel 30 Drive, Bonita Springs, Florida, and is described more particularly as:

"See Exhibits"

WHEREAS, a Public Hearing was advertised and heard on October 2, 2009 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") on Case PD08-B0S00001 who gave full consideration to the evidence available and recommended approval (5-0, Healy & Brandeth absent); and gave full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all interested parties. The September 11, 2009 Staff Report prepared by Community Development and evidence submitted at the Zoning Board hearing is on file with the City Clerk.

NOW, THEREFORE, BE IT ORDAINED 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 rezoning with the following conditions and deviations:

A. Conditions

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Channel 30 Drive Commercial Planned Development", prepared by ConsulTech Development Services stamped

received June 4, 2009, except as modified by the conditions below. This development must comply with all requirements of the City of Bonita Springs Land Development Code (LDC) at the time of Development Order Approval, except as granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Animals:

Clinic

Kennel

Control center (including Humane Society)

Auto Parts Store

Automotive Repair and Service (Group I & II)

Boat storage, dry, not exceeding 18 feet above grade

Boat storage, dry, exceeding 18 feet above grade

Broadcast studio, commercial radio and television

Building material sales

Business Services (Group I & II)

Bus station/depot

Caretaker's residence

Caterers

Cleaning and maintenance services

Communication tower:

100 feet or less in height

Over 100 feet in height (existing only)

Contractors and Builders (Group I)

Entrance gates and gatehouse

Essential Services facilities (Group I)

Excavation, Water Retention

Farm equipment, sales, storage, rental, service

Feed or fertilizer, mixing and sales

Freight and cargo handling establishments

Laundry or Dry Cleaning (Group I & II)

Lawn and Garden Supply Store

Manufacturing, repair or wholesale sales of:

Apparel

Electrical machinery and equipment

Fabricated metal products (Group II)

Food and Kindred products (Group III)

Leather products (Group II)

Lumber and wood products (Groups II,)

Measuring, analyzing and controlling instruments

- Novelties, jewelry, toys and signs (Group I, II & III)
- Rubber and plastic products (Group II)
- Non-store retailers, (all Groups)
- Paint, glass and wallpaper
- Pet services
- Pet shop
- Plant nursery
- Post Office
- Printing and publishing
- Processing and warehousing
- Rental or Leasing Establishments (Group I, II & III)
- Repair Shops (Group I, II & III)
- Research and development laboratories (Group II, IV)
- Residential accessory uses
- Retail and wholesales, when clearly incidental and subordinate to a permitted use on the same premises
- Signs in accordance with Chapter 6
- Storage:
 - Indoor
 - Storage, open
- Studios
- Temporary uses
- Transportation services (Group II)
- Vehicle and equipment dealers (Group I & II)
- Warehouse:
 - Mini-warehouse
 - Private
 - Public
- Wholesale establishment (Groups I & III)

b. Site Development Regulations

Minimum Area Dimension:

- Lot Area: 6.109 ± acres
- Lot Depth: As shown on MCP
- Lot Width: As shown on MCP

Minimum Building Setbacks:

- Road / ROW: 20 FT
- Front: 25 FT
- Side (East): BLDGS 1 & 2 = 25 FT
3 & 4 = 8 FT
- Rear (South): 20 FT
- Waterbody: 25 FT
- Preserve: 25 FT
- Minimum Building Separation: 25 FT

Maximum Building Height:	BLDG 1: 60 FT/5 stories BLDG 2: 40 FT/3 stories BLDG 3: 15 FT/1 story BLDG 4: 15 FT/1 story
Maximum Lot Coverage:	40%
Minimum Open Space	20%

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the City of Bonita Springs LDC may be required to obtain local development order.
4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the City of Bonita Springs Comprehensive Plan provisions.
5. This development must comply with all of the requirements of the LDC at the time of the local development order approval, except as may be granted by deviation approved as part of this planned development.
6. Development must include sidewalks as a site related improvement. Such facilities must be included in local development orders as part of the project's infrastructure, and as part of any vertical development.
7. The development must comply with the commercial lighting standards found in the LDC, Chapter 3. Street, parking lot and building lighting must be shielded so that light is directed downward to reduce spillage to off-site parcels.
8. Prior to local development order approval the developer must provide facilities in compliance with the Bonita Springs LDC for the pickup/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of local development order application for vertical development.
9. The developer will use best efforts to incorporate principles for its building through the Florida Green Building Coalition program, in site design and construction, by emphasizing use of high energy efficiency designs and use of high energy efficient fixtures and appliances where possible. Building materials, both internal and external, will be comprised of durable and recycled materials where possible.
10. Utilization of one hundred (100) percent native vegetation planting within all required landscaping, restoration, creation, and enhanced

preservation areas. The applicant may install non-native plantings for accent above the required plantings in landscaped areas only.

11. Prior to local development order approval, a tree survey shall be required when appropriate, to determine if the site contains Heritage Trees. If the site contains Heritage Trees, an appearance before the Tree Advisory Board prior to the issuance of a development order is required.
12. Development orders for this project shall be required to provide an additional 50% retention/detention for water quality treatment systems, Policy 9.3.3 Bonita Springs Comprehensive Plan, and shall use a treatment train approach, incorporating Best Management Practices, according to Policy 9.3.1., Bonita Springs Comprehensive Plan.
13. All plants which are on the *Florida Exotic Pest Plant Counsel's 2007 List of Invasive Plant Species, Category 1* list, shall be removed from the project area, including conservation, open space and developed areas. The site shall be maintained free of plants on the Florida Exotic Pest Plant Counsel's 2007 List of Invasive Plant Species, Category 1 list in perpetuity.
14. Prior to local development order approval, development order plans must depict the xeric oak community within the preserve area as "Gopher Tortoise Preserve", and any gopher tortoises found on site shall be placed into this preserve. If the amount of tortoises exceeds the FFWCC guidelines for the preserve area, the "extra" tortoises may be relocated offsite by obtaining a Florida Fish and Wildlife Conservation Commission (FFWCC) relocation permit. The applicant must first seek approval for preservation of gopher tortoises in place before pursuing off-site relocation options.

Any gopher tortoises and commensal species found during burrow excavation must be moved to preserves containing suitable gopher tortoise habitat as approved by the Florida Fish and Wildlife Conservation (FFWCC) and City of Bonita Springs Environmental Sciences staff.
15. The 0.653± acre environmentally sensitive xeric oak community, FLUCFCS Code 421, shall be preserved. A conservation easement shall be placed on this area to preserve it in perpetuity. The conservation easement shall be dedicated to the City of Bonita Springs with no responsibility for maintenance.
16. A Twisted Air Plant, which is listed by the Florida Dept of Agriculture as Threatened, is located in the pine flatwoods adjacent to the xeric oak

community. This plant shall be protected by preserving a 10' buffer around the staggerbush shrub which the plant is growing on.

17. A listed species management plan for the preserve area shall be required at the time of development order. The management plan shall address the Twisted Air Plant, the gopher tortoises, and exotic plant and animal species control in the preserve area.
18. All required landscaping for the Type "A" buffer will be placed in the 2.5 foot buffer on the northern side of the FP&L easement and will be maintained to prevent encroachment.
19. As part of the development order submittal an intersection analysis will be preformed for Channel 30 Drive and Old 41 road. This will be used to determine the length of turn lanes on Old 41 accessing the site.
20. The applicant will enter into a developer's agreement prior to development order approval to determine proportionate fair share of necessary off-site improvements to Old 41 and the Seminole Gulf Railroad / CSX railroad crossing.
21. Parking for the Warehousing, public or self storage:
 - a. The applicant must provide a minimum of one (1) parking space per 3,000 square feet of gross floor area. Should City Council make a determination, at a meeting where the current Owner of record is given notice that this parking is not meeting the operational requirements, the Owner must provide additional parking consistent with the Land Development Code (LDC) for the use; and
 - b. Parking spaces approved through this deviation are for the warehousing, public or self storage uses only; and
 - c. No parking spaces or loading zones required for the warehousing, may be utilized for the Business Services Group I & II, communications buildings, caretaker's quarters; and
 - d. Overnight parking of is not permitted within designated parking spaces.
22. The proposed 20' utility easement line shown on the current MCP shall be approved in 2 phases so as to deal with the constrained physical site limitations in protecting the gopher tortoises and protecting the buffer. First phase will include the western most 10' for stormwater / utilities. Phase II shall include the additional 10'. The approval of phase II shall be conditioned upon a new evaluation to determine the number and

health of gopher tortoises, and the quality of the xeric preserve. If the additional 10' is sought for Phase II, this request can be made administratively. The utility easement along the western side of the Gopher Tortoise preserve shall remain at the same grade as the preserve and consist of under ground utilities. After completion of the underground utilities, this area shall be planted with gopher tortoise friendly xeric plants. A minimum of 6 different native plant species shall be used (three different shrubs and three different groundcovers). Shrubs shall be planted on 5' centers and groundcover massings shall be planted on 1' centers. Appropriate plants shall consist of gopher apple, wiregrass, butterfly peas, gall berry, prickly pear cactus, paw paw and palmettos. A planting plan shall be submitted to the Community Development Department for review and approval.

23. The proposed pre-fabricated modular communications buildings identified as 3 & 4 on the Master Concept Plan may be modified to allow more than 2 buildings in this location, as long as the total square footage does not exceed 960 square feet nor can any of the buildings be greater than 12 feet wide.
24. The property will be required to water and sewer hook-up prior to certificate of completion when the flow generated to the septic drain bed exceeds 3,200 square feet capacity for the drain bed.

B. Deviations

Deviation 1 is approved, granting relief from LDC §3-416(D)(3) which requires a type "E" buffer (25 ft. wide with a wall) or a type "F" buffer (30 ft wide with no wall) to permit a type "D" buffer (8 ft wide), subject to the proposed septic system and the modular communication building locations, as long as the required number of plantings for the type "D" buffer is placed within the proposed 8 FT.

Deviation 2 is approved, granting relief from LDC §34-2020, parking requirements of one (1) parking space per 1000 SF of area for warehousing, public or self storage to have one (1) parking space per 3000 SF of area, subject to Condition 21.

Deviation 3 is approved, granting relief from LDC §3-416(D)(3) which requires a type "A" buffer (5 FT wide) along the south property line to provide a type "A" buffer encroaching 2.5 FT along the north side of the existing FP&L easement, subject to Condition 18.

C. Findings and Conclusions:

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

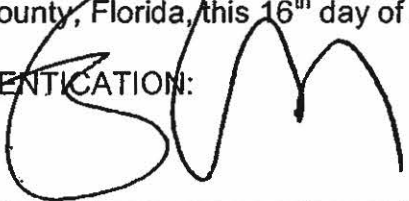
1. The applicant has proven entitlement to the rezoning of a Commercial Planned Development (CPD) by demonstrating compliance with the Bonita Springs Comprehensive Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested CPD zoning, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the City of Bonita Springs Comprehensive Plan.
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Bonita Springs Comprehensive Plan, are, or will be, available and adequate to serve the proposed land use.
5. As conditioned, the proposed uses are appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
8. The deviations granted, as conditioned:
 - a) enhance the objectives of the planned development; and
 - b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

SECTION TWO: EFFECTIVE DATE

This ordinance shall take effect thirty (30) days from the date of adoption.

DULY PASSED AND ENACTED by the Council of the City of Bonita Springs,
Lee County, Florida, this 16th day of November, 2009.

AUTHENTICATION:

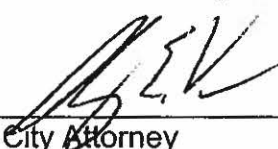


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Ferreira	Aye	Nelson	Aye
Lonkart	Aye	Simons	Aye
McCourt	Aye	Spear	Aye
Martin	Aye		

Date filed with City Clerk: 11-16-09

LEGAL DESCRIPTION
FOR
9930 CHANNEL 30 DRIVE., BONITA SPRINGS, FL 34135
(STRAP NO. 03-48-25-B3-00001.0030)

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY); SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

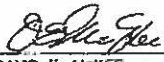
SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT:
A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

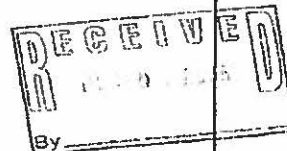
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

CONTAINING 8.109 ACRES.

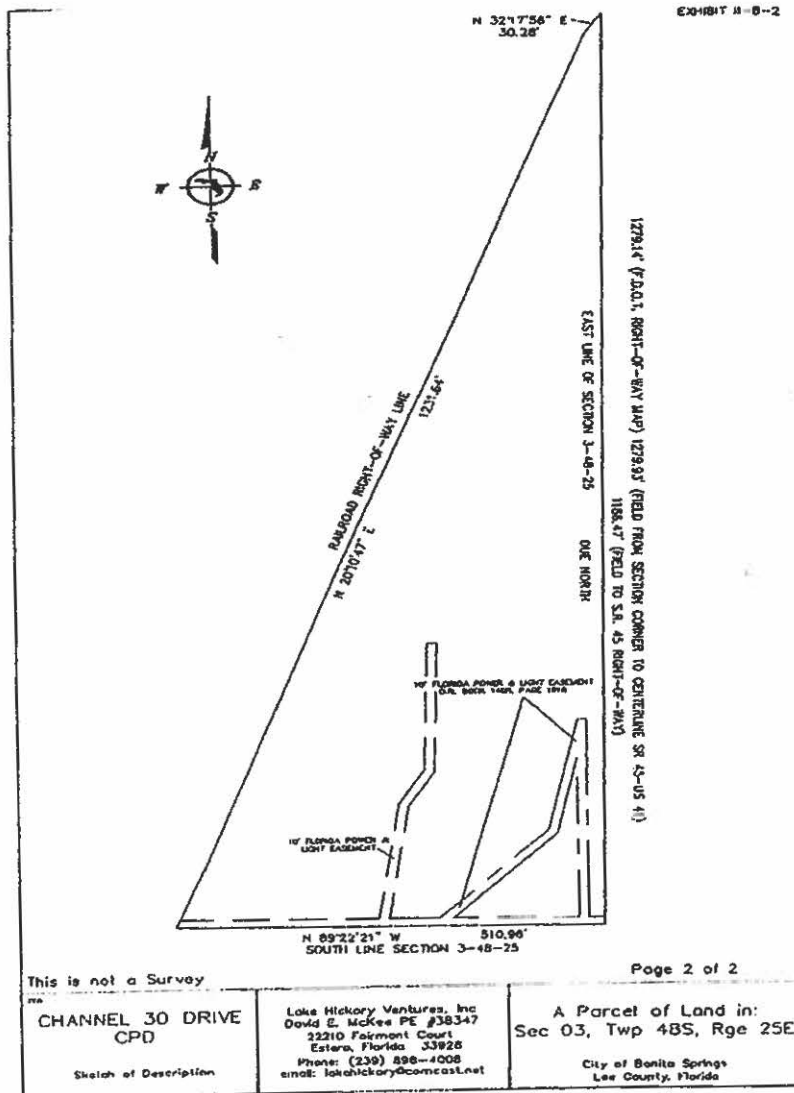
 5/20/08
DAVID E. MCKEE
PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO: PE38347

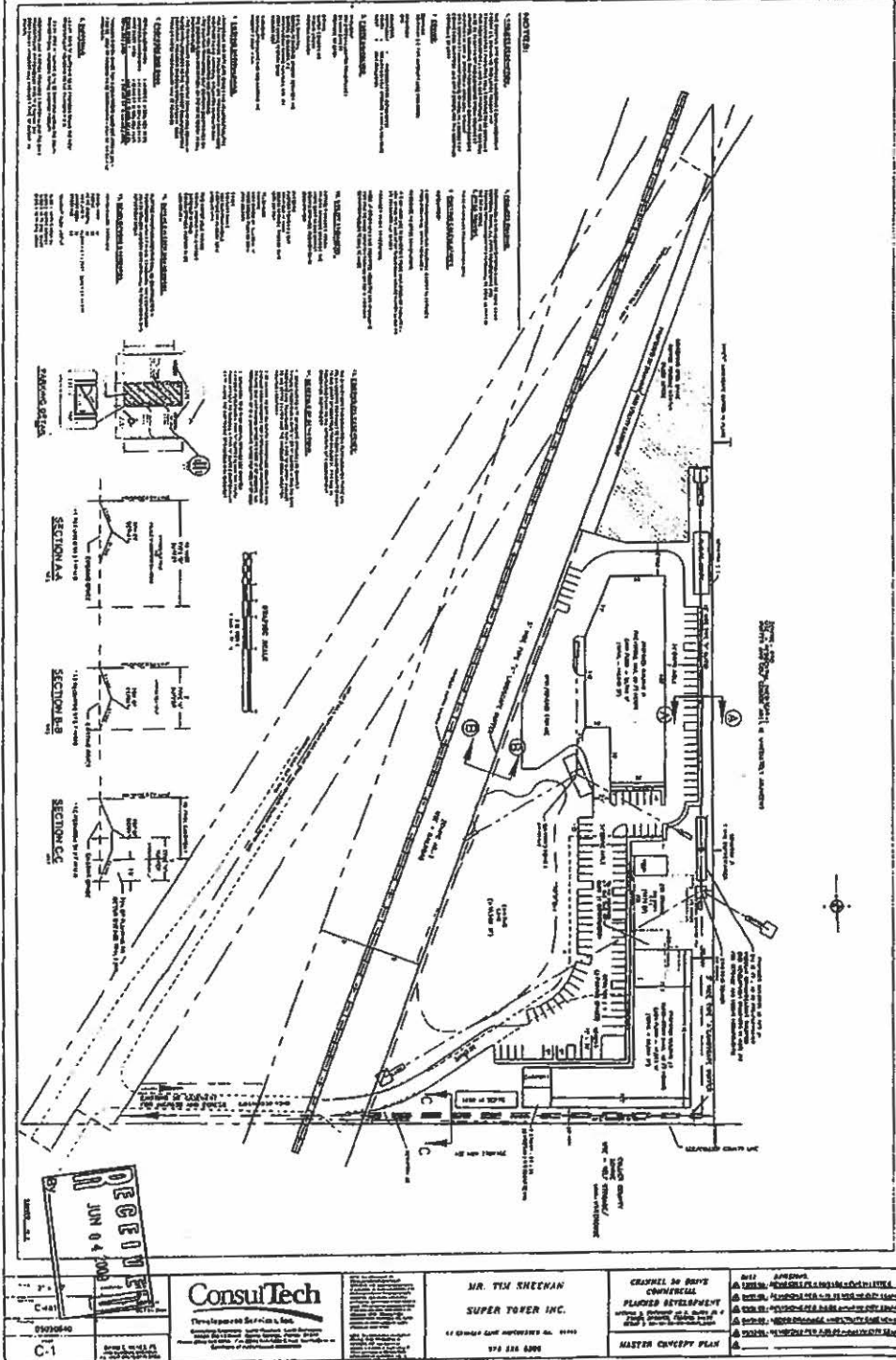


This is not a Survey

Page 1 of 2

for CHANNEL 30 DRIVE CPD Legal Description	Lake Hickory Ventures, Inc David E. McKee PE #38347 22210 Fairmont Court Estero, Florida 33928 Phone: (239) 898-4808 email: lakehickory@comcast.net	A Parcel of Land in: Sec 03, Twp 48S, Rge 25E City of Bonita Springs Lee County, Florida
---	--	--





**ADMINISTRATIVE AMENDMENT ADD13-05141-BOS
TO CHANNEL 30 DRIVE COMMERCIAL CENTER CPD**

**ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA**

WHEREAS, McKee Engineering Consultants, Inc filed an application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan (MCP) for the project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14; and

WHEREAS, the subject property is located in the Industrial District future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the applicant is requesting to replace the existing aging communication tower, make some minor changes in the modular communication buildings and add one additional generator; and

WHEREAS, Zoning Ordinance No. 09-14 allows for communication towers over 100' feet in height (existing only); and

WHEREAS, Zoning Ordinance No. 09-14 lists no conditions relative to the maintenance and or replacement of the existing communication tower; and

WHEREAS, the applicant wishes to be replace the existing aging communication tower with a new tower; and

WHEREAS, the existing tower will remain in service while the new tower is being built in order for the continued operation of the existing radio and cell phone antennas during construction of the new tower; and

WHEREAS, the new tower will be constructed approximately 13 feet north of the existing tower; and

WHEREAS, the height of the new tower will be the same as the existing tower; and

WHEREAS, the existing tower will be demolished once the replacement tower is constructed and existing communication antennas are relocated; and

WHEREAS, the applicant wishes to demolish and replace the existing modular communication buildings, which does not increase the total square footage permitted; and

WHEREAS, the applicant wishes to add one additional generator to support the replacement communication tower; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses; and

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on April 22, 2013 ("Attachment A").
2. The proposed setbacks for the replacement communication tower are as follows:
 - North property point/corner: from 853' to 840'
 - East property line: Same
 - South property line: 13' farther away
 - West property line: from 300' to 296'
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land

Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

4. The applicant must submit a Limited Development Order prior to construction reflecting these modifications and a construction schedule for the replacement tower and demolition of the existing tower.
5. Forty-eight hours before commencing construction of the replacement communication tower, and within 48 hours after the antenna-supporting structure reaches its maximum height, the Lee Port Authority, Sheriff's Office, Emergency Medical Services, the local fire district and the Lee County Mosquito Control District must be notified by the entity constructing the antenna-supporting structure.
6. The existing tower must be fully disassembled and removed within 90 days of the completion of the new tower and transfer of equipment.
7. The relocation of any future replacement tower facilities may be handled administratively as long as the replacement tower is constructed for the same purpose as the existing tower, does not require additional towers and is not greater in height.
8. If high voltage is necessary for the operation of proposed wireless communication facilities, High Voltage-Danger and No Trespass warning signs not greater than one (1) square foot in area must be permanently attached to the fence or wall at intervals of not less than forty (40) feet and upon the access gate, or as otherwise required by the FAA or FCC.

DULY signed this 6 day of June, A.D., 2013

BY: _____

John Dulmer, AICP, Community Development Director

Department of Community Development

LEGAL DESCRIPTION
FOR
9930 CHANNEL 30 DRIVE., BONITA SPRINGS, FL 34135
(STRAP NO. 03-48-25-B3-00001.0030)

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY); SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT:
A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

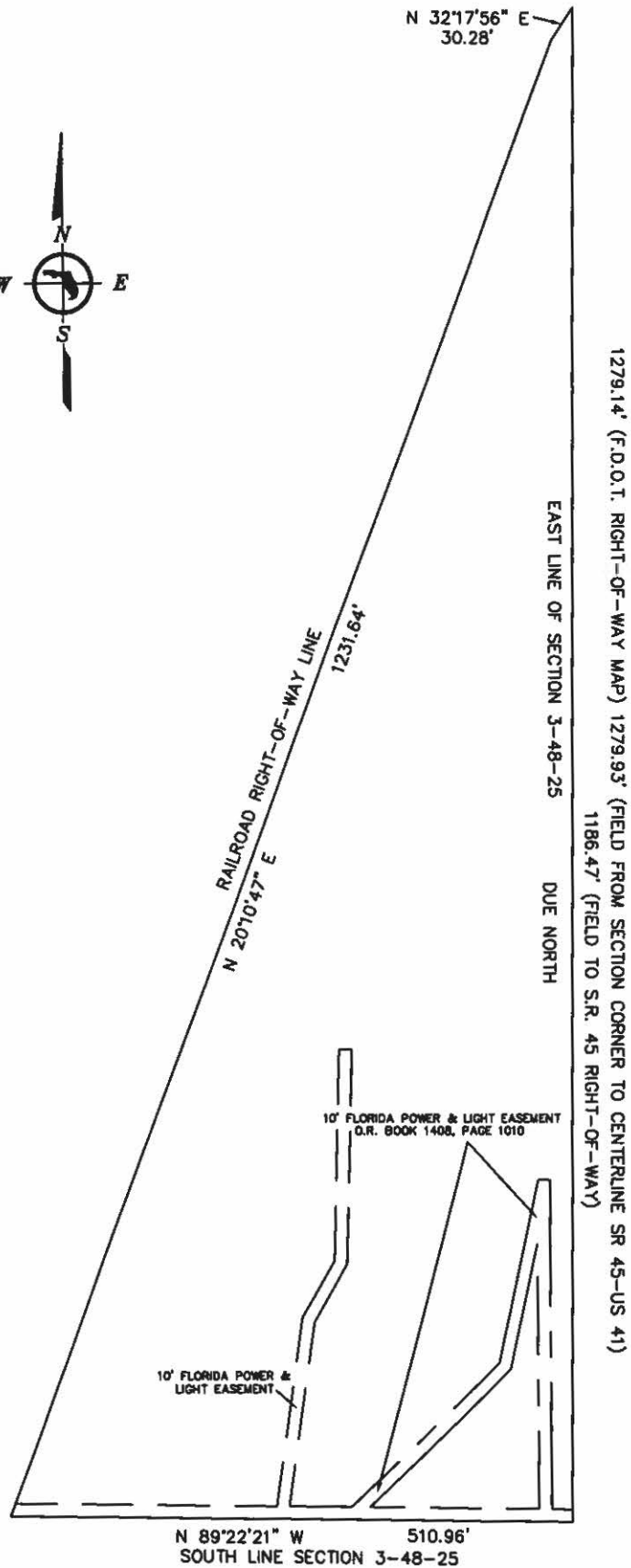
CONTAINING 6.109 ACRES.

DAVID E. McKEE
PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO: PE38347

This is not a Survey

Page 1 of 2

for CHANNEL 30 DRIVE CPD Legal Description	Lake Hickory Ventures, Inc David E. McKee PE #38347 22210 Fairmont Court Estero, Florida 33928 Phone: (239) 898-4008 email: lakehickory@earthlink.net	A Parcel of Land in: Sec 03, Twp 48S, Rge 25E City of Bonita Springs Lee County, Florida
---	--	--



This is not a Survey

Page 2 of 2

FOR
CHANNEL 30 DRIVE
CPD

Sketch of Description

Lake Hickory Ventures, Inc
David E. McKee PE #38347
22210 Fairmont Court
Estero, Florida 33928
Phone: (239) 898-4008
email: lakehickory@aol.com
4/2/19

A Parcel of Land in:
Sec 03, Twp 48S, Rge 25E

City of Bonita Springs
Lee County, Florida

- EXISTING TOWER WILL REMAIN IN PLACE UNTIL NEW TOWER IS COMPLETE AND ALL ELECTRICAL AND COMMUNICATION CONNECTIONS ARE READY TO BE MADE. EXISTING RADIO STATIONS AND CELL PHONE SERVICE DISRUPTIONS MUST BE MINIMIZED.
- NEW GUY WIRES WILL BE CONNECTED TO NEW ANCHORS THAT WILL BE INSTALLED JUST IN FRONT OF THE EXISTING ANCHORS (BETWEEN THE TOWER AND EXISTING ANCHOR). EXISTING ANCHORS WILL BE REMOVED TO JUST BELOW GRADE.
- NEW TOWER HEIGHT SHALL BE THE SAME AS THE EXISTING TOWER: 681'-10" ABOVE GRADE WITH AN ADDITIONAL 53'-10" ANTENNA ON TOP WITH LIGHTED BEACON.
- AS SHOWN ON THE DRAWING, THE GUY WIRES WILL STILL BE WITHIN THE LEASED AREA ON THE PROPERTY TO THE EAST.



PROJECT

Channel 30 Drive Commercial Center
Administrative Amendment; ZD 09-14/PD08-80500001
9930 Channel 30 Drive
Bonita Springs, FL 34135
Mr. Mike Sawyer 508/217-1753

McKee Engineering Consultants, Inc.
(fka Lake Hickory Ventures, Inc.)

Engineering Permitting Land Development
22710 Fairmont Court Estero, FL 33928
Phone (239) 866-4208 Fax (239) 483-5008 email: mcdougall@compnet.net
CENTRAC OF AMERICA, INC. 82745

DAVID E. NIEFF
Professional Services
A/E 10047, 67010 W. FLORIS

**ADMINISTRATIVE AMENDMENT ADD16-26594-BOS
TO CHANNEL 30 DRIVE COMMERCIAL CENTER CPD**

**ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA**

WHEREAS, McKee Engineering Consultants, Inc. filed an application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add generators as depicted on the attached revised Master Concept Plan (MCP) for the project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14; and

WHEREAS, the subject property is located in the Industrial District future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the applicant is requesting to replace the existing aging communication tower, make some minor changes in the modular communication buildings and add additional generators; and

WHEREAS, Zoning Ordinance No. 09-14 allows for communication towers over 100' feet in height (existing only); and

WHEREAS, Zoning Ordinance No. 09-14 lists no conditions relative to the maintenance and or replacement of the existing communication tower; and

WHEREAS, the applicant wishes to be replace the existing aging communication tower with a new tower; and

WHEREAS, the existing tower will remain in service while the new tower is being built in order for the continued operation of the existing radio and cell phone antennas during construction of the new tower; and

WHEREAS, the new tower will be constructed approximately 34.9 feet northwest of the existing tower; and

WHEREAS, the height of the new tower will be the same as the existing tower; and

WHEREAS, the existing tower will be demolished once the replacement tower is constructed and existing communication antennas are relocated; and

WHEREAS, the applicant wishes to demolish and replace the existing modular communication buildings, which does not increase the total square footage permitted; and

WHEREAS, the applicant wishes to add one additional generator to support the replacement communication tower; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses; and

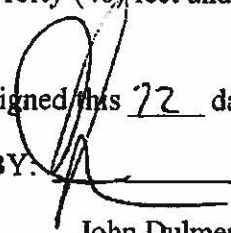
NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on January 4, 2016 ("Attachment A").
2. The proposed setbacks for the replacement communication tower are as follows:
 - North property point/corner: from 893.8' to 860.1'
 - East property line: from 15.4' to 26.3'
 - South property line: from 292.6' to 326.5'
 - West property line: from 300.8' to 278.8'
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land

Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

4. The applicant must submit a Limited Development Order prior to construction reflecting these modifications and a construction schedule for the replacement tower and demolition of the existing tower.
5. Forty-eight hours before commencing construction of the replacement communication tower, and within 48 hours after the antenna-supporting structure reaches its maximum height, the Lee Port Authority, Sheriff's Office, Emergency Medical Services, the local fire district and the Lee County Mosquito Control District must be notified by the entity constructing the antenna-supporting structure.
6. The existing tower must be fully disassembled and removed within 90 days of the completion of the new tower and transfer of equipment.
7. The relocation of any future replacement tower facilities may be handled administratively as long as the replacement tower is constructed for the same purpose as the existing tower, does not require additional towers and is not greater in height.
8. If high voltage is necessary for the operation of proposed wireless communication facilities, High Voltage-Danger and No Trespass warning signs not greater than one (1) square foot in area must be permanently attached to the fence or wall at intervals of not less than forty (40) feet and upon the access gate, or as otherwise required by the FAA or FCC.

DULY signed this 22 day of JANUARY, A.D., 2016

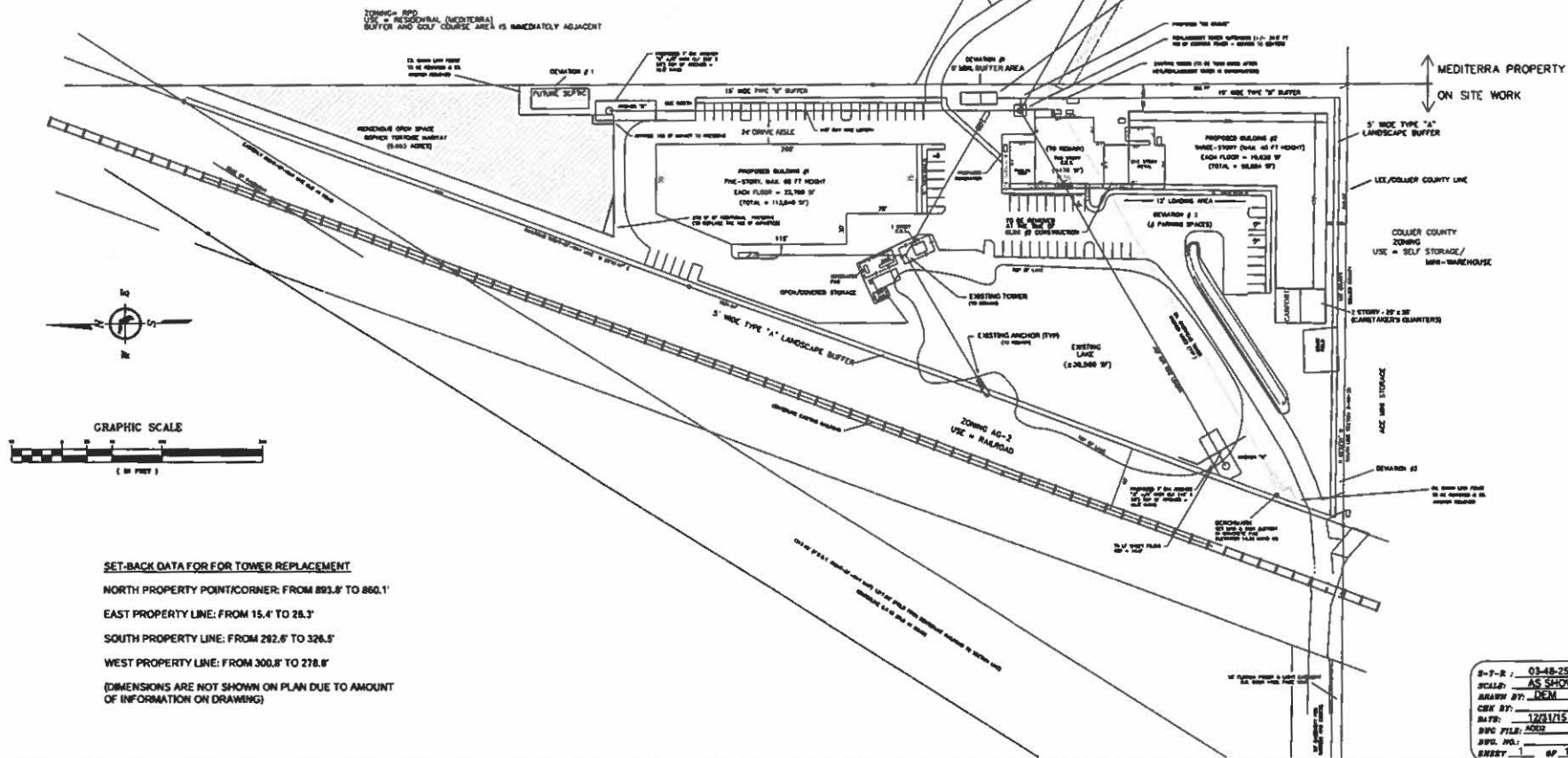
BY: 

John Dulmer, AICP, Community Development Director

Department of Community Development

NOTES REGARDING TOWER RELOCATION/REPLACEMENT:

- EXISTING TOWER WILL REMAIN IN PLACE UNTIL NEW TOWER IS COMPLETE AND ALL ELECTRICAL AND COMMUNICATION CONNECTIONS ARE READY TO BE MADE. EXISTING RADIO STATIONS AND CELL PHONE SERVICE DISRUPTIONS MUST BE MINIMIZED.
- NEW TOWER HEIGHT SHALL BE THE SAME AS THE EXISTING TOWER: 881'-10" ABOVE GRADE WITH A 50' OF TOWER HEIGHT ON TOP WITH LUMINOUS ZONE.
- WORK ON THE MEDITERRA PARCEL REQUIRES ADDITIONAL APPROVALS, WHICH MUST BE OBTAINED AS PART OF A LIMITED REVIEW DEVELOPMENT PROCESS.
- THE PLACEMENT OF ANCHOR-B" REQUIRES A SMALL ADJUSTMENT IN THE INDIGENOUS AREA, AS SHOWN ON THIS PLAN. THERE IS A NET INCREASE OF 40 SF IN PRESERVE AREA.
- PARKING SPACE CANNOT BE TIGHTENED BY THE CURRENT DESIGN. TO REDUCE THE NUMBER OF PARKING SPACES TO 83, AS SHOWN ON THIS PLAN, THAT MEETS THE MINIMUM NUMBER REQUIRED BY THE CURRENT ZONING FOR SELF STORAGE FACILITIES.



00731027

Channel 30 Drive Commercial Center
Admin. Amend. to ZO 09-14/PD08-BOS00001
9930 Channel 30 Drive & ADD13-05141-BOS
Borita Springs, FL 34135
Atty Sawyer, Phone #508/317-1753

McKee Engineering Consultants, Inc.

Engineering Permitting Lead Development
22210 Fairmont Court Estero, FL 33436
Phone (239) 888-4208 Fax (239) 493-5008
email: mchase@effern.com
conductor of all business with

with

JEDN. 7 GLAV.

3-T-R : 03-48-25
SCALE: AS SHOWN
DRAWN BY: DEM
CHK BY:
DATE: 12/31/15
DWG FILE: A002
DWG NO.:
PAGE: 1 OF 1

ADMINISTRATIVE AMENDMENT ADD18-53020-BOS (PD)

**ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA**

WHEREAS, McKee Engineering Consultants, Inc. filed an application for administrative approval to amend the Master Concept Plan (MCP) in accordance with Condition 22 of Zoning Ordinance No. 09-14 for a project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc. to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14 with subsequent amendments in ADD13-05141-BOS and ADD16-26594-BOS; and

WHEREAS, the subject property is located in the Industrial future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the applicant is requesting to amend the Master Concept Plan in accordance with Condition 22 of Zoning Ordinance No. 09 14; and

WHEREAS, Condition 22 required a new evaluation to determine the number and health of the site's gopher tortoises, and the quality of the site's xeric preserve, when Phase II of the utility and drainage easement is utilized; and

WHEREAS, the applicant is in the process of coordinating with Bonita Springs Utilities (BSU) for the installation of a water main to provide domestic and fire protection water services utilities, as well as, piping infrastructure for a future wastewater force main for the project site within the subject easement; and

WHEREAS, the applicant has submitted a gopher tortoise and preserve area evaluation that has been reviewed and accepted by Environmental Sciences; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to modify the existing drainage and utility easement as well as the abutting preserve area as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on May 03, 2019 ("Attachment A").
2. As a condition of approval for the requested site improvements, any excessive removal of mature vegetation will require additional mitigation plantings (trees, shrubs and ground covers) within the site's exiting preserve area, subject to review and approval by Environmental Sciences.
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

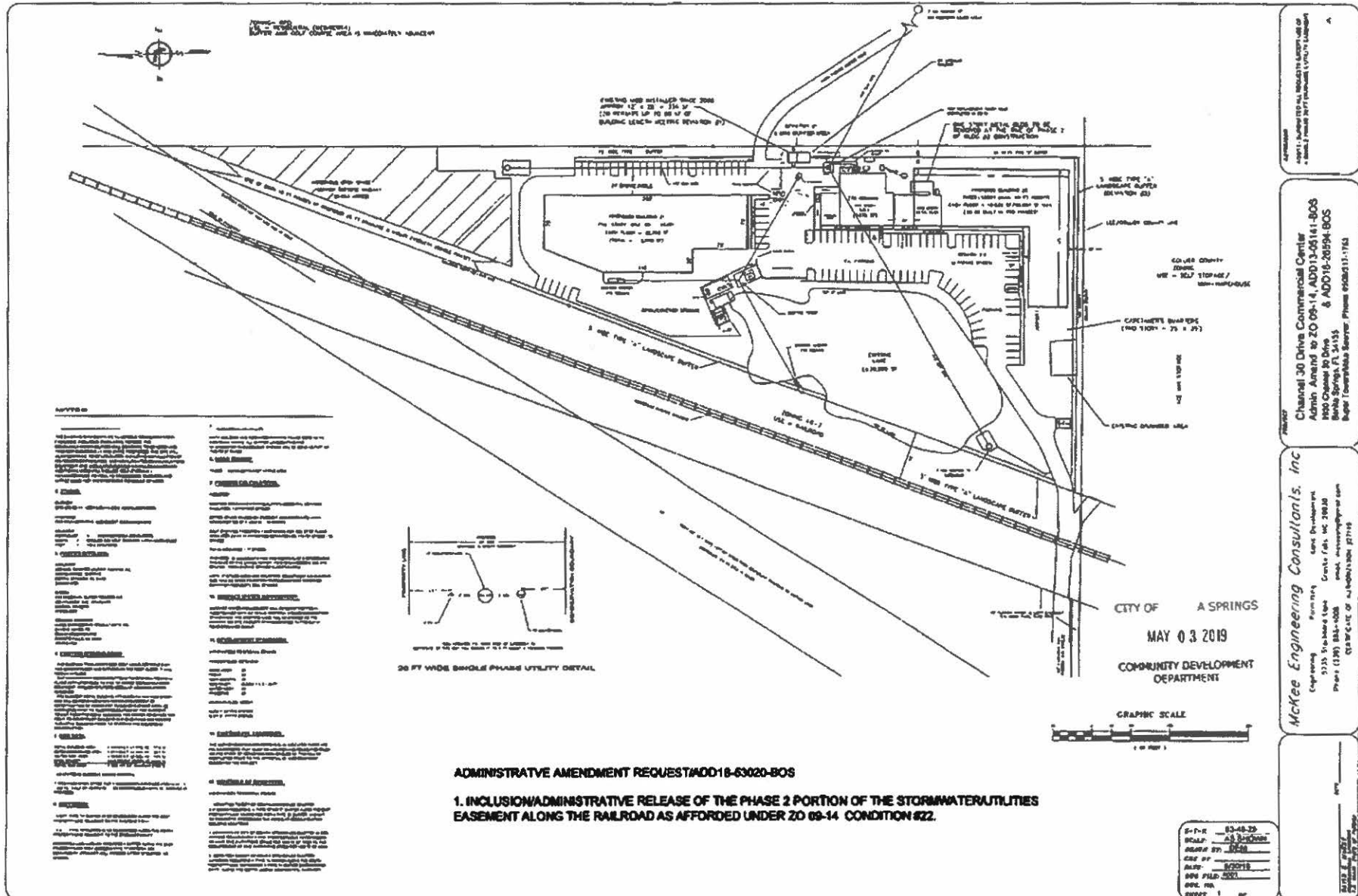
DULY sig day of A.D., 2019

BY

..... Jmer, AICP, Community Development Director

Department of Community Development

Attachment "A"



BONITA SPRINGS, FLORIDA
COMMUNITY DEVELOPMENT DEPARTMENT
ZONING DIVISION
STAFF REPORT

TYPE OF CASE: REZONE – COMMERCIAL PLANNED DEVELOPMENT
AMENDMENT

CASE NUMBER: PD18-54088-BOS

HEARING DATE: October 20, 2020
Continued from June 16, 2020 and March 17, 2020

PLANNERS: Jacqueline Genson, AICP

APPLICATION SUMMARY:

- A. Applicant: SUPER TOWERS, INC.
- B. Agent: Maser Consulting, P.A.
- C. Request: A request to amend City of Bonita Springs Zoning Ordinance No. 09-14 as subsequently amended in City of Bonita Administrative Amendments ADD13-05141-BOS, ADD16-26594-BOS, and ADD18-53020-BOS to incorporate the following changes:
1. Modify the height and number of stories of the two buildings from five stories/60 feet and three stories/40 feet to both be four story buildings with a maximum height of 50 feet; and
 2. Increase the square footage of the small modular communications buildings (MCBs) from the current 384 square feet remaining allocation to 1,834 square feet by eliminating the Caretaker's quarters from the current development plan.
- D. Location: The subject property is located at 9930 Channel 30 Drive, Bonita Springs, FL 34135.
- E. Future Land Use Map Designation: Industrial
- F. Current Zoning: Commercial Planned Development (CPD)
- G. Current Land Use: Contractor and Builder Group I with ancillary outdoor storage (Kelly Roofing), existing broadcast and telecommunication facilities

By this reference, the Applicant's application in its entirety and correspondence is made part of this record and is available at the City Clerk's and Community Development's Offices.

BACKGROUND:

History and Overview:

The proposed development is located north of the Lee and Collier County line, east of Old 41 and the Seminole Gulf railroad tracks and west of the Mediterra golf course. The subject property has been used for communications facilities since the 1970's, including a local Public Broadcasting System (PBS) station in the 1980's. The existing concrete and metal buildings on the site still contain communications and electrical equipment to serve the two tall communication towers. The 300-foot tower was added to the site in 1998 along with several small modular communications buildings (MCBs) to serve both towers. The 700-foot tower was replaced in 2016. A wholesale nursery had also operated at the site until 2006.

In 2009 the site was rezoned to a CPD under ZO 09-14 with a variety of uses. The approval allowed for the continuation of the wireless communication facilities and the broadcast tower. The approval also included the construction of two buildings; building #1 as a five-story building with a maximum height of 60 feet and building #2 as a three-story building with a maximum height of 40 feet.

Over the past ten years, the property owner has obtained several limited review local development order permits to make improvements to serve the existing wireless communication facilities, replace the 700' tower, further stabilize the site for permissible uses, install required landscape buffering, and maintain the preserve areas. The wireless communications facilities provide cellular service to wireless providers and also provides telecommunication services for Collier County. Kelly Roofing has been a tenant of the site since 2015.

This CPD amendment request is to modify the number of stories for two new buildings and increase the square footage of the modular communications buildings for the existing wireless communication facilities. The property owner held preapplication meetings with Staff in 2017 and 2018 relative to this request. They had also coordinated with Mediterra relative to this request and line of site concerns. They have also been actively working with the railroad and Bonita Springs Utilities to bring potable water to the site.

Overall, the Applicant and Staff are in agreement with the application request. Minor areas of disagreement pertain to the Schedule of Uses. These items are discussed further in the Staff Report.

Uses: The property owner has requested some new uses as a part of this request. Staff has also re-evaluated the appropriateness of the Schedule of Uses approved in ZO-09-14 based on compatibility with the surrounding neighborhood and prior Council direction regarding specificity of planned development requests. Staff's recommendations to existing conditions are depicted in strike-thru and underline format in Condition 3a. Changes also reflect the changes in Use Activity Groups as last amended in 2017. The Applicant's requested uses are included in Attachment "B." The Applicant has agreed to remove most uses as recommended by Staff.

However, there still are a few uses of concern such as the bus station/depot and Repair Shops Groups IV and V uses.

The property owner engaged in neighborhood meetings with plans that did not illustrate a bus station/depot. The property owner has not provided adequate information to evaluate the appropriateness of that use for this location. This does not preclude the property owner from amending their planned development in the future should they decide to pursue this use.

The property owner is also requesting the addition of Repair Shops Groups IV and V for the existing Kelly Roofing tenant.

d. Group IV. Establishments primarily engaged in repairing gasoline-driven motorized equipment (not automotive) or which are engaged in welding, electric motor rewinding or other similar major repair work.

e. Group V. Establishments primarily engaged in repair or services of large equipment and machinery not elsewhere classified.

Kelly Roofing performs their own fleet repair in lieu of using an outside vendor. These uses are for establishments primarily engaged in a repair business, not a tenant that performs their own repairs. The property owner is also requesting the ability to perform the repairs outside and not in an enclosed facility, as is required elsewhere for automotive repair and service establishments. Even if permitted as an ancillary use, site and environmental controls are necessary to ensure proper disposal and contaminant storage is provided in accordance with the appropriate regulating authority.

Property Development Regulations: Changes to the property development regulations include the reduction in height and number of stories for Building 1 (reduction of 10' and one story) and the increase in height and number of stories for Building 2 (increase of 10' and one story). Other minor changes include a decrease in the rear setback and a height standard for the MCB equipment. These changes are enumerated in Condition 3b.

Deviations:

Deviations may be requested during the review process in accordance with [LDC 4-326](#). The Zoning Board may recommend to approve, approve with modification or reject each requested deviation based upon a finding that each item:

1. Enhances the achievement of the objectives of the planned development; and
2. Preserves and promotes the general intent of this chapter to protect the public health, safety and welfare.

The city manager or designee is also authorized to grant deviations from the technical standards for specific sections in LDC Chapter 3 based on review criteria established in LDC 3-81(b). In those instances, Staff has evaluated those deviations as a part of this review process and may approve, approve with conditions or reject the Applicants request. The Applicant must ensure that the following criteria have been met:

1. The proposed alternative is based on sound engineering practices; and
2. The proposed alternative is no less consistent with the health, safety and welfare of abutting landowners and the general public than the standard from which the deviation is being requested; and

3. For division 7 of article III of this chapter, Public Transit, the required facility would unnecessarily duplicate existing facilities; and
4. The granting of the deviation is not inconsistent with any specific policy directive of the city council, any other ordinance, or any city comprehensive plan provision; and
5. The granting of the deviation is not inconsistent with in the intent of the bicycle and pedestrian master plan, Bonita Beach Road Visioning Study, and the complete streets policy.

The current planned development request includes eight (8) deviations. Three of the eight deviations were previously approved in ZO-09-14. Deviation 1 has been modified slightly with the elimination of the drain bed, while Deviations 2 and 3 remain the same with slight modification to accurately reflect the current LDC citation (i.e. Chapter 34 is now Chapter 4). Four (4) new deviations have also been requested. All four (4) deviations are included in the Applicant's Analysis in Attachment "B". Staff's recommendation on the deviation requests are included below.

1. **Deviation No. 1:** A deviation from City of Bonita Springs LDC Section 3-418 (d)(3) and LDC 4-2074(a)(2)(a) requiring a type "E" buffer (25 ft. wide with a wall and 30 shrubs/100 linear feet) or a type "F" buffer (25 ft. wide, no wall, double row staggered hedge) to permit a type "D" buffer, subject to the modular communication buildings locations.

Justification: This is an existing deviation from the original zoning approval. This deviation request is from the Landscape and Self-Storage standards of the Land Development Code. Staff has reviewed the Applicant's request based on review criteria established in LDC Sec. 4-326 and **supports** the deviation as requested.

2. **Deviation No. 2:** Deviation to City of Bonita Springs LDC Section 4-1732 requiring one (1) parking space per 1000 sf of floor area for Warehousing, Public or self-storage to provide for one (1) parking space per 3000 sf of floor area.

Justification: This is an existing deviation from the original zoning approval and was approved subject to Condition 21 of ZO-09-14. The applicability and justification is still appropriate based on the Applicant's current request. The LDC reference has also been updated to reflect the repeal of LDC Chapter 34 and adoption of LDC 4 (Zoning Chapter). Staff continues to **support** the deviation subject to Condition 21 of ZO-09-14 and Condition 12.

3. **Deviation No. 3:** Is a carryover from the projects prior zoning approvals and is a deviation from City of Bonita Springs LDC Chapter 3-418(d)(3) requiring a Type "A" buffer along the South property line to provide a type "A" buffer (5 ft. wide) along the south to permit a type "A" buffer encroaching 2.5 ft along the north side of the existing FPL easement.

Justification: This is an existing deviation from the original zoning approval. This deviation request is from the Landscape standards of the Land Development Code. Staff has reviewed the Applicant's request based on review criteria established in LDC Sec. 4-326 and **supports** the deviation as requested.

4. **Deviation No. 4:** Deviation to City of Bonita Springs LDC Chapter 3-353 requiring a connection to the sanitary sewer system when building size exceeds 30,000 sf or estimated wastewater flow exceeds 5,000 gallons per day (gpd).

Justification: Condition 24 of ZO-09-14 approved the project's the ability to utilize well and septic as set forth in that condition. The property owner continues to coordinate with Bonita Springs Utilities (BSU) and adjacent property owners on the ability to connect to the central sewer system. Correspondence between City Staff and BSU is included in Attachment A. There are several ways that the Applicant can connect to the central sewer system (i.e. force mains exist at the entrance of Old 41 and Mediterra and at Cordova). Staff acknowledges that the connection to central sewer requires a substantial investment and coordination with these various entities and in some instances, the railroad. The 2019/20 City Council Strategic Priorities include Improving Storm Water Management and Environmental Protection. The use of septic, when connection to central sewer is available, conflicts with the intent of those priorities as it pertains to water quality. The property owner has obtained proper agency permits from the Department of Health, which expands the septic capacity to accommodate Phase I, Building 2. Staff is seeking City Council direction given the 2019/20 City Council Strategic Priorities relative to water quality. Staff has prepared a revision to Condition 24 of ZO-09-14 should City Council **wish to approve** the deviation request. See Condition 4.

5. **Deviation No. 5:** Deviation to City of Bonita Springs LDC Chapter 3-490(b), 3-2074(b), and Division 36 of LDC 4 requiring a 25 ft set-back and 8 ft high wall to buffer the overhead doors in building #1 and outdoor storage to be covered with a structure architecturally consistent with the principal structures, to allow for a 15 ft set-back with Type D buffer planting requirements and 8-ft high masonry wall for that section of the west property line residing between the north end of the lake and the south end of the indigenous preserve and to eliminate the covered storage requirement.

Justification: This deviation request applies to the perimeter of the project that abuts a 130-foot-wide railroad right-of-way and private property. The most northerly portion of the site is an indigenous preserve. The project will still include a combination of the 8-foot-high wall setback 15 feet from the property line with plantings as required by LDC Sec. 4-2074(b) in areas not utilized as preserve or water management. The property owner has provided illustrations that demonstrate the growth rate of this buffer to demonstrate its effect. The covered open storage requirement was approved by City Council in 2017, mainly to protect aesthetics of adjacent properties. This is an infill site and is adjacent to a railroad right-of way, the Mediterra golf course, and similar storage uses to the south in Collier County. Based on the design of the master concept plan and proposed buffer plan, staff has no objection to the covered storage request. Conditions are recommended to ensure appropriate screening of overhead doors from the street or residential property. Staff **supports** the deviation subject to Condition 5.

6. **Deviation No. 6:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(6)(a), which requires habitable buildings to be set-back a minimum of 30-ft from "wildland" areas to reduce the set-back to 8 ft for Modular Communication Buildings (MCBs).

Justification: This deviation request is from the Open Space standards of the Land Development Code. Staff has reviewed the Applicant's request based on review criteria established in LDC 3-81(b) and **supports** the deviation as requested.

7. **Deviation No. 7:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(1)(a) requiring a minimum of 30-ft setback from indigenous native vegetation to habitable structures to reduce the set-back to 8 ft for Modular Communication Buildings (MCBs).

Justification: This deviation request is from the Open Space standards of the Land Development Code. Staff has reviewed the Applicant's request based on review criteria established in LDC 3-81(b) and **supports** the deviation as requested.

8. **Deviation No. 8:** Deviation to City of Bonita Springs LDC Chapter 3-331(d)(4) requiring a 4:1 (H:V) maximum slope from the top of bank to a water depth of four feet below the dry season water table to allow for a steeper slope of 2:1 (H:V). This deviation request is from the technical standards for specific sections in LDC Chapter 3 and can be approved administratively.

Justification: This deviation request is for the existing stormwater pond, which has existing slopes that are steeper than the required 4:1 (H:V). Slopes that do not meet the LDC requirements will be stabilized with a geoweb system to provide for additional slope stabilization. Staff has reviewed the Applicant's request based on review criteria established in LDC 3-81(b) and **supports** the deviation as requested.

CONCLUSIONS:

The following conclusions are based upon the Applicant's Application being reviewed for compliance with the City's Code of Ordinances and the application of sound planning, engineering, surveying, and environmental practices. Attachment "A," which is attached hereto and made a part hereof, demonstrates the type of analysis that was done. The Applicant's application materials and exhibits are included in Attachment "B."

The Applicant held a post sufficiency neighborhood meeting as required by the City's LDC. The meeting was held at the St. Leo's Catholic Church on December 4, 2019; several members of the public attended. Neighborhood concerns revolved around traffic, signage, security, view corridors, lighting, and screening. Additional methods of public notice included mailed notices to properties within 375 feet of the property, and rezoning property posting sign at the entrance at Old 41. A legal ad for the Zoning Board public hearing was run in the newspaper.

The proposed zoning amendment is to reduce the height of one of the buildings from five (5) stories to four (4) stories and increase the height of another from three (3) stories to four (4) stories. The overall development intensity is also proposed to be decreased from the currently approved 172,724 square feet to 169,584 square feet. The amount of permitted commercial uses will continue to be capped at 46,866 square feet with the remaining floor area to be utilized for a self-storage/mini-warehouse facility.

The applicant will be required to comply with the Transportation Impact Statement LDC and Guidelines at time of local development order. The request modifies building height and does not increase traffic intensity. Public Works and the Collier County Department of Transportation reviewed this request and conditions have been incorporated accordingly.

RECOMMENDATION:

Staff recommends **APPROVAL** of Petition PD18-54088-BOS Channel 30 CPD, which proposes to modify the height and number of stories of the two new buildings and increase the square footage of the small modular communications buildings (MCBs). This recommendation of APPROVAL is subject to the following conditions:

Conditions:

1. All conditions of City of Bonita Springs Zoning Ordinance No. 09-14 and City of Bonita Administrative Amendments ADD13-05141-BOS, ADD16-26594-BOS, and ADD18-53020-BOS ((Exhibit "C") remain in full force and effect, unless specifically amended herein.
2. Condition 1 of Zoning Ordinance (ZO) 09-14 is hereby amended for the development of this project. The development shall be generally consistent with the Master Concept Plan stamped received September 29, 2020, and titled "Super Towers, Inc." prepared by Maser Consulting, P.A., and attached hereto (Exhibit "B").

The development is limited to the two existing communication towers, ancillary equipment and 1,834 square feet of modular communication buildings; 169,584 square feet of building floor area, with the amount of commercial uses limited to 46,866 square feet with the remaining floor area to be utilized for a self-storage/mini-warehouse facility.

3. Condition 2 of ZO-09-14 is hereby amended for the development of this project. The limits apply to the project and uses:

a. Schedule of Uses

Animals:

Clinic

~~Kennel~~

~~Control center (including Humane Society)~~

~~Auto Parts Store~~

Automotive Repair and Service (Group I & II)

Boat storage, dry, not exceeding 18 feet above grade

Boat storage, dry, exceeding 18 feet above grade (vertical stacking of boats is prohibited)

Broadcast studio, commercial radio and television

Building material sales

Business Services (Group I & II)

~~Bus station/depot~~

Caretaker's residence

Caterers

Cleaning and maintenance services

Communication tower:

100 feet or less in height

Over 100 feet in height (existing only)

Contractors and Builders Groups I, II, and III (subject to Condition 12)

Entrance gates and gatehouse

Essential Services facilities (Group I)

Excavation, Water Retention

~~Farm equipment, sales, storage, rental, service~~

~~Feed or fertilizer, mixing and sales~~

~~Freight and cargo handling establishments~~

~~Laundry or Dry Cleaning (Group I & II)~~

~~Lawn and Garden Supply Store~~

~~Manufacturing, repair or wholesale sales of:~~

~~Apparel~~

~~Electrical machinery and equipment~~

~~Fabricated metal products (Group II)~~

~~Food and Kindred products (Group III)~~

~~Leather products (Group II)~~

~~Lumber and wood products (Groups II)~~

~~Measuring, analyzing and controlling instruments~~

~~Novelties, jewelry, toys and signs (Group II)~~

~~Rubber and plastic products (Group II)~~

~~Non-store retailers, (all Groups)~~

~~Paint, glass and wallpaper~~

~~Pet services~~

~~Pet shop~~

~~Plant nursery~~

~~Post Office~~

~~Printing and publishing~~

~~Processing and warehousing~~

~~Rental or Leasing Establishments (Group I, II & III)~~

~~Repair Shops (Group I, II & III)~~

~~Research and development laboratories (Groups II and IV)~~

~~Residential accessory uses~~

~~Retail and wholesales, when clearly incidental and subordinate to a permitted use on the same premises~~

~~Signs in accordance with Chapter 6~~

~~Storage:~~

~~Indoor~~

~~Storage, open (limited to issuance of a building permit for Phase 2 construction of Building #1)~~

~~Studios~~

~~Temporary uses~~

~~Transportation services (Group II)~~

~~Vehicle and equipment dealers (Group I & II)~~

~~Warehouse:~~

~~Mini-warehouse~~

~~Private~~

~~Public~~

~~Wholesale establishment (Groups I & III)~~

b. Site Development Regulations

Minimum Area Dimension:

Lot Area: 6.109 ± acres

Lot Depth: As shown on MCP

Lot Width: As shown on MCP

Minimum Building Setbacks:

Road / ROW: 20 FT

Front: 25 FT

Side (East):	BLDGS 1 & 2 - 25 <u>30</u> FT MCBs = 8 FT
Rear (South):	20 FT <u>BLDG 2=25 FT</u>
Waterbody:	25 FT
Preserve:	25 FT
Minimum Building Separation:	25 FT
Maximum Building Height:	BLDG 1: 60 FT/5 <u>50 FT/4</u> stories BLDG 2: 40 FT/3 <u>50 FT/</u> <u>4</u> stories BLDG 3: 15 FT/1 story BLDG 4: 15 FT/1 story
Maximum Lot Coverage:	40%
Minimum Open Space	20%

4. Potable water and Sanitary Sewer Systems. Condition 24 of ZO-09-14 is hereby amended for the development of this project.

~~The property will be required to water and sewer hook-up prior to certificate of completion when the flow generated to the septic drain bed exceeds 3,200 square feet capacity for the drain bed.~~

At time of local development order approval for construction of Building #2 in Phase 1, the Developer shall obtain the necessary approvals for the ability to connect all new and existing buildings to the central water system. If Building #1 in Phase 2 is constructed, the wastewater flow from the entire project shall connect to the central sanitary sewer system.

5. Architectural.
- a. Final architectural approval by the City Architect will be required prior to local development order approval. This review and approval shall be consistent Chapter 3 and 4 of the City of Bonita Springs Land Development Code; and
 - b. At time of local development order, the architect of record should demonstrate that the upper portions of the primary facades delineate the surfaces with geometric patterns, vertical and/or horizontal, in the stucco finish. Or, provide the upper façade with a change in material as well. The architect may also add more horizontal glazing to reduce the visual impact of these buildings; and
 - c. The architect should use vertical trellis for climbing landscape plant material to equal not more than 30% of the total area; and
 - d. Deviation 5 is approved to allow the installation of a wall/berm combination, not less than eight feet in height, and located a minimum of 15 feet from the property line. The exterior side of the wall must be planted with a double-staggered hedgerow no less than 48 inches at the time of planting and maintained at 60 inches within two years of planting, in addition to five trees per 100 linear feet; and

- e. At time of local development order, the Applicant may utilize additional landscaping and/or screen walls to screen the overhead doors. Screening shall be a minimum height of 90 percent of the overhead door height, or a landscape buffer achieving 75 percent opacity within one year. The placement and length of these screening devices shall block the view of the overhead doors from the street or from any residually used properties.
- 6. Signage. Any building wall signage facing residually zoned property shall be non-Illuminated.
- 7. Environmental
 - a. Prior to local development order approval, a tree survey shall be required when appropriate, to determine if the site contains Heritage Trees. If the site contains Heritage Trees and the trees are proposed for removal, an appearance before the Tree Advisory Board prior to the issuance of a development order is required.
 - b. All plants which are on the Florida *Exotic Pest Plant Counsel's List of Category 1 Invasive Plant Species* shall be removed from the project area, including conservation, open space and developed areas. The site shall be maintained free of plants on the latest Florida Exotic Pest Plant Counsel's List of Invasive Plant Species, Category 1 list in perpetuity.
 - c. Prior to local development order approval, development order plans must depict the preserve area as "Gopher Tortoise Preserve", and any gopher tortoises found on site shall be placed into this preserve. If the amount of tortoises exceeds the FFWCC guidelines for the preserve area, the "extra" tortoises may be relocated offsite by obtaining a Florida Fish and Wildlife Conservation Commission (FFWCC) relocation permit. The applicant must first seek approval for preservation of gopher tortoises in place before pursuing off-site relocation options. Any gopher tortoises and commensal species found during burrow excavation must be moved to preserves containing suitable gopher tortoise habitat as approved by the Florida Fish and Wildlife Conservation (FFWCC).
 - d. A conservation easement shall be placed on the 0.653± acre environmentally sensitive pine flatwood with xeric oak community to preserve it in perpetuity. The conservation easement shall be dedicated to the City of Bonita Springs with no responsibility for maintenance.
 - e. A Twisted Air Plant, which is listed by the Florida Dept. of Agriculture as Threatened shall continue to be protected by preserving a 10' buffer around the staggerbush shrub which the plant is growing on.
 - f. A listed species and preserve area management plan shall be submitted for review and approval with the next development order. The management plan shall address all requirements per LDC Sec. 3-417(e) – Indigenous preserve management plan, including but not limited to the Twisted Air Plant, the gopher tortoises, signage, and exotic plant and animal species control in the preserve area.

- g. The utility easement along the western side of the Gopher Tortoise preserve shall remain at the same grade as the preserve and consist of underground utilities. After completion of the underground utilities, this area shall be planted with gopher tortoise friendly xeric plants. A minimum of 6 different native plant species shall be used (three different shrubs and three different groundcovers). Shrubs shall be planted on 5' centers and groundcover massings shall be planted on 1' centers. Appropriate plants shall consist of gopher apple, wiregrass, butterfly peas, gall berry, prickly pear cactus, and paw paw. A planting plan shall be submitted to the Community Development Department for review and approval.
 - h. An eight (8) foot setback from the adjacent preserve/ wild land area shall be allowed for the Modular Communication Buildings (MCBs).
8. Landscaping and Buffering
- a. Utilization of one hundred (100) percent native vegetation planting within all required landscaping, restoration, creation, and enhanced preservation areas. The applicant may install non-native plantings for accent above the required plantings in landscaped areas only; and
 - b. All required landscaping for the Type "A" buffer will be placed in the 2.5-foot buffer on the northern side of the FP&L easement and will be maintained to prevent encroachment; and
 - c. Buffers shall be provided as shown on the MCP and as described by deviations.
9. Engineering.
- a. At time of local development order, the developer must obtain the necessary approvals from the railroad for the reconfiguration of the existing lake. Furthermore, the railroad will be required to be a co-applicant on the SFWMD ERP application; and
 - b. In support of Deviation 8, at time of local development order, the developer shall incorporate bank stabilization materials, such as geoweb or comparable materials, that will prevent erosion of the lake bank due to the increased slope; and
 - c. At time of local development order, the developer shall submit a lake maintenance plan that defines appropriate and adequate maintenance areas. Said plan shall provide for perpetual maintenance in conformance with City standards; and
 - d. At time of local development order, the use of gutters, downspouts and bubblers/yard drains may be required to properly channelize and direct runoff to a suitable outfall; and
 - e. At time of local development order, the Applicant may be required to add some type of detectable material to the bottom portions of the guy wires to ensure pedestrian and drivers are aware of their locations. Furthermore, additional lighting may be required around these areas; and
 - f. At time of local development order, the applicant shall be required to add a clearance bar of 16' prior to entering the parking area associated to Building 1; and

- g. The Applicant is on notice that at time of local development Order, the Fire Department may require 20' width drive aisle around Building 1, meeting the currently adopted Florida Fire Prevention Code (FFPC) inclusive of the National Fire Protection Association (NFPA) for Fire Department access.

10. Bicycle and Pedestrian

- a. All required bicycle, pedestrian and multimodal facilities must meet or exceed the specifications set forth in LDC 3-263, 3-302, 3-303 and 3-491, as may be amended; as well as any applicable elements of the respective City of Bonita Springs Bicycle Pedestrian Master Plan [PATH] Bonita Beach Road Corridor Design Standards; and
- b. At time of local development order, the applicant shall provide a fee-in-lieu payment for, or construct, the required offsite bicycle, pedestrian and complete streets facility improvements along/within the Channel 30 Drive and Old US 41 as consistent with requirements of LDC 3-263, 3-302, 3-303, 3-491, City of Bonita Springs Bicycle Pedestrian Master Plan [PATH], as applicable.

11. Transportation Conditions

- a. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the City of Bonita Springs Land Development Code may be required to obtain local development order; and
- b. The Developer must comply with concurrency requirements (all conditions required by the Bonita Springs Comprehensive Plan and the Land Development Code) to obtain a local development order; and

12. Contractor and Builder Group III

- a. This use is limited to the existing Kelly Roofing tenant.
- b. Fabrication work and the outdoor storage of earth moving equipment, cranes, concrete mixers, aerial lift equipment, and other similar heavy construction equipment are prohibited.
- c. Boom trucks shall be stored with arms in a downward position.
- d. The outdoor storage of equipment associated with this use shall cease prior to issuance of a building permit for Phase 2 construction of Building #1.
- e. At time of local development order, the property owner shall designate an appropriate impervious area for Kelly Roofing to conduct their ancillary fleet repair. Proper BMPs shall be provided to demonstrate the method(s) of use, storage, and disposal of any hazardous materials, in addition to equipment to avoid and minimize spills and discharges, in accordance with all applicable regulations.

13. Parking. Any use that requires equipment and/or vehicle storage must demonstrate consistency with LDC Sec. 4-1732(3)c and cannot be parked in a required space.

14. This development is subject to conditions set forth herein and the rules, regulations laws and codes in place at the time of Development Order and Constructions Plan approval. Approval of this Planned Development is not a guarantee of future approvals.

Deviations:

The revised Master Concept Plan and LDC changes necessitate the need to re-evaluate Deviations 1-3 as approved in ZO-09-14. This amendment request includes four new deviations (Deviations 4 thru 7).

1. **Deviation No. 1:** Deviation to City of Bonita Springs LDC Chapter 3-418 (d)(3) and LDC4-2074(a)(2)(a) requiring a type "E" buffer (25 ft. wide with a wall and 30 shrubs/100 liner feet) or a type "F" buffer (25 ft. wide, no wall, double row staggered hedge) to permit a type "D" buffer, subject to the modular communication buildings locations. Deviation 1 is APPROVED subject to Condition 8.
2. **Deviation No. 2:** Deviation to City of Bonita Springs LDC Chapter 4-1732 requiring one (1) parking space per 1000 sf of floor area for Warehousing, Public or self-storage to provide for one (1) parking space per 3000 sf of floor area. Deviation 2 is APPROVED subject to Condition 21 of ZO-09-14 and Condition 12.
3. **Deviation No. 3:** Deviation to City of Bonita Springs LDC Chapter 3-416(D)(3) requiring a Type "A" buffer along the South property line to provide a type "A" buffer (5 ft. wide) along the south to permit a type "A" buffer encroaching 2.5 ft along the north side of the existing FPL easement. Deviation 3 is APPROVED subject to Condition 8.
4. **Deviation No. 4:** Deviation to City of Bonita Springs LDC Chapter 3-353 requiring a connection to the sanitary sewer system when building size exceeds 30,000 sf or estimated wastewater flow exceeds 5000 gpd. Staff recommends a revision to Condition 24 of ZO-09-14 should City Council wish to approve the deviation request. See Condition 4.
5. **Deviation No. 5:** Deviation to City of Bonita Springs LDC Chapter 3-490(b), 3-2074(b), and Division 36 of LDC 4 requiring a 25 ft set-back and 8 ft high wall to buffer the overhead doors in building #1 and outdoor storage to be covered with a structure architecturally consistent with the principal structures, to allow for a 15 ft set-back with Type D buffer planting requirements and 8-ft high masonry wall for that section of the west property line residing between the north end of the lake and the south end of the indigenous preserve and to eliminate the covered storage requirement. Deviation 5 is APPROVED subject to Condition 5.
6. **Deviation No. 6:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(6)(a) requiring habitable buildings to be set-back a minimum of 30 ft from "wildland" areas to reduce the set-back to 8 ft for Modular Communication Buildings (MCBs). Deviation 6 is APPROVED subject to Condition 8.
7. **Deviation No. 7:** Deviation to City of Bonita Springs LDC Chapter 3-417(b)(1)(a) requiring a minimum of 30-ft setback from indigenous native vegetation to habitable structures to reduce the set-back to 8 ft for Modular Communication Buildings (MCBs). Deviation 7 is APPROVED subject to Condition 8.
8. **Deviation No. 8:** Deviation to City of Bonita Springs LDC Chapter 3-331(d)(4) requiring a 4:1 (H:V) maximum slope from the top of bank to a water depth of four feet below the dry season water table to allow for a steeper slope of 2:1 (H:V). Deviation 8 is APPROVED subject to Condition 9.

SUBJECT PROPERTY:

The Applicant indicates the STRAP number is: 03-48-25-B3-00001.0030

EXHIBITS:

- A. Legal Description and Sketch of the Subject Property stamped received October 4, 2018
- B. Master Concept Plan stamped received February 24, 2020
- C. Zoning History: Zoning Ordinance No. 09-14 and City of Bonita Administrative Amendments ADD13-05141-BOS, ADD16-26594-BOS, and ADD18-53020-BOS

ATTACHMENTS:

- A. Staff Informational Analysis
 - i. Background and Informational Analysis
- B. Applicant's Informational Analysis
 - i. Application
 - ii. Mailing Labels and Variance Report for Parcels within 375 feet
 - iii. Project Location Map
 - iv. Comprehensive Plan Consistency, LDC Consistency, and Design Standards and Design Decision Making Narrative and Addendum
 - v. Environmental Assessment and Mapping
 - vi. Traffic Impact Statement
 - vii. Public Transit Map
 - viii. Topographic Survey
 - ix. Schedule of Uses
 - x. Schedule of Deviations
 - xi. Description of Proposed Development
 - xii. Surface Water Management Plan and Cross-sections
 - xiii. Program for Phased Development
 - xiv. Aerial
 - xv. Mediterra Photo Exhibit
 - xvi. Architectural Renderings
 - xvii. December 4, 2019 Neighborhood Meeting Information
 - xviii. Old 41 buffer exhibits (1-year, 5-year, and 10-year)

Exh. 11-B-1

LEGAL DESCRIPTION

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY; SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT: A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

CONTAINING 6.109 ACRES.

SKETCH OF DESCRIPTION NOT A SURVEY

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE: 8.16.18

RECEIVED
CITY OF BONITA SPRINGS
OCT 10 2018
COMMUNITY DEVELOPMENT
DEPARTMENT

CECI GROUP SERVICES
COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@ceciff.com

CLIENT:

SUPER TOWERS INC.

TITLE:

SKETCH OF DESCRIPTION OF THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY; SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

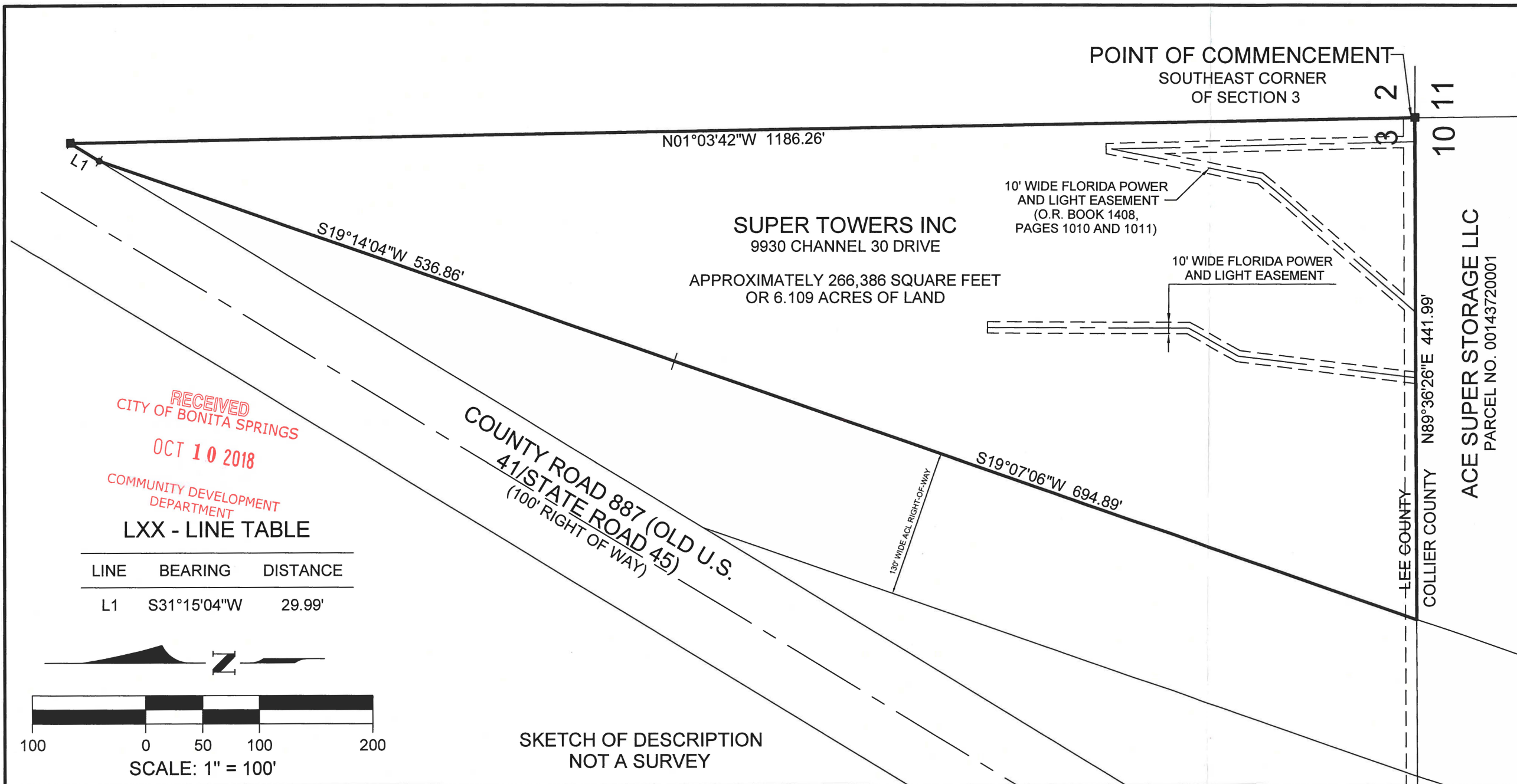
DATE: 08/16/18 SCALE: 1" = 100'
DRAWN: MMW F.B. N/A
CHECKED: RJE PG. N/A
SEC. 3 TWP. 48S RNG. 25E
ACAD NO. 18.195
REF. NO. 18.195- BOUNDARY SKETCH

NO. DATE BY REVISION DESCRIPTION

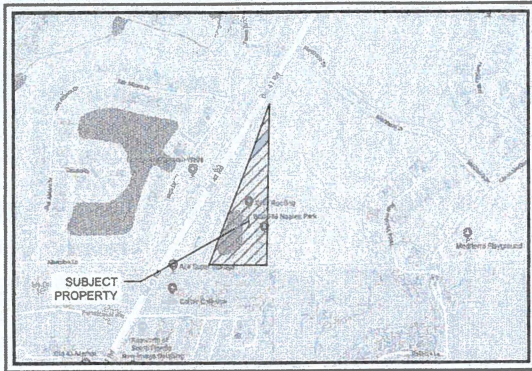
SHEET 1 OF 2
FILE NO. 18.195

COASTAL
ENGINEERING
CONSULTANTS
INC.
A CECI GROUP COMPANY
Serving Florida Since 1977
3106 SOUTH HORSESHOE DRIVE
NAPLES, FLORIDA 34104

Exh. 11-B-2



 COASTAL ENGINEERING CONSULTANTS INC. A CECI GROUP COMPANY Serving Florida Since 1977 3106 SOUTH HORSESHOE DRIVE NAPLES, FLORIDA 34104	CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING	CLIENT: SUPER TOWERS INC.	DATE: 08/16/18	SCALE: 1" = 100'					
		TITLE: SKETCH OF DESCRIPTION	DRAWN: MMW	F.B. N/A					
			CHECKED: RJE	PG. N/A					
			SEC. 3	TWP. 48S	RNG. 25E				
			ACAD NO. 18.195						
65/219			REF. NO. 18.195- BOUNDARY SKETCH	NO.	DATE	BY	REVISION DESCRIPTION		



LOCATION MAP
1" = 200'

GENERAL DESIGN & REFERENCE NOTES:

PROJECT DESCRIPTION:

THE EXISTING SITE CONTAINS NUMEROUS COMMUNICATIONS FACILITIES, INCLUDING TWO LARGE TOWERS. THE COMMUNICATION FACILITIES WILL CONTINUE TO BE USED AND TWO NEW BUILDINGS (1 AND 2) ARE PROPOSED. THE SITE WILL ALSO CONTINUE TO BE UPGRADED, INCLUDING INSTALLATION OF WATERSEWER FACILITIES, AND NEW/UPGRADED COMMUNICATIONS EQUIPMENT AND MODULAR BUILDINGS INSTALLED AS NEEDED. PROPOSED NEW USES WILL INCLUDE SELF-STORAGE / MINI-WAREHOUSE AS WELL AS COMMERCIAL BUSINESS AND OFFICE USES, PER THE PROPOSED SCHEDULE OF USES.

2. ZONING:

CURRENT:
CPD (ZO 09-14, ADD10-15-141, B05, ADD16-26594-B05 & PENDING ADD18-53020-B05)

PROPOSED:
CPD PUBLIC HEARING AMENDMENT (AS DESCRIBED HEREON)

ADJACENT:
NORTHEAST = BOWMETERIA DEVELOPED
SOUTH = COLLIER CO SELF STORAGE & MINI WAREHOUSE
WEST = AG-2 (RAILROAD)

3. PARTIES INVOLVED:

APPLICANT:
SUPER TOWERS INC./MICHAEL SAWYER
9930 CHANNEL 30 DRIVE
BONITA SPRINGS, FL 33435
508-317-1733

ECOLOGIST:
BOTAN ENVIRONMENTAL CONSULTANTS
11000 METRO PARKWAY
FORT MYERS, FL 33966
239-418-0671

OWNER:
SUPER TOWERS INC./TIMOTHY SHEEHAN
470 ATLANTIC AVE., 4TH FLOOR
BOSTON, MA 02219
978-628-7068

ARCHITECT:
KENNETH CARLSON ARCHITECT, P.A.
1166 WEST NEWPORT CENTER DR., SUITE 311
DEERFIELD BEACH, FL 33442
954-427-8848

SITE/CIVIL ENGINEER:
MASER CONSULTING P.A.
STUART ROGERS, PE
5471 W. WATERS AVE. STE. 100
TAMPA, FL 33634
813-287-1861 EXT. 4903

SURVEYOR:
COASTAL ENGINEERING INC.
3106 SOUTH HONOLULU DRIVE
NAPLES, FL 34104
239-443-3324

4. EXISTING SITE BUILDINGS:

- THE EXISTING "TWO-STORY CONCRETE BUILDING" CONTAINS ELECTRONICS ON THE SECOND FLOOR AND BUILDING/CONTRACTOR ACTIVITIES ON THE FIRST FLOOR.
- THE TWO PRIMARY COMMUNICATIONS TOWERS WILL REMAIN IN PLACE WITH UPGRADES TO THE "AT GRADE" COMMUNICATIONS EQUIPMENT, INCLUDING FUTURE MODULAR COMMUNICATIONS BUILDINGS (MCB).
- THE CURRENT METAL BUILDING ATTACHED TO THE TWO STORY COMMUNICATION BUILDING WILL BE REMOVED.

5. SITE DATA:

TOTAL BUILDING AREA * = 24,333 S.F. (0.558 AC.) 9.26
INTERVIOUSLY PAVED AREA = 93,648 S.F. (2.141 AC.) 35.15
WATER POND AREA = 38,565 S.F. (0.885 AC.) 14.55
OPEN SPACE ** = 109,609 S.F. (2.556 AC.) 41.25
TOTAL SITE AREA = 266,101 S.F. (6.109 AC.) 100%

- * INCLUDES SMALL MODULAR COMMUNICATIONS BLDGS (MCB).
- ** 760 SF EXISTING, 1,834 SF PROPOSED, 384 SF NOT INSTALLED FROM PREVIOUSLY APPROVED 1960 SF ALLOWANCE AND 1,450 SF ADDITIONAL AS A REPLACEMENT FOR THE CARETAKER'S QUARTERS (ALLOWS FOR 32 LF INSTALLED ALONG EAST PROPERTY LINE PER DEVIATION #1 REQUEST AND "INTERNAL" INSC).

** REQUIRED OPEN SPACE FOR A COMMERCIAL LAND USE AREA IS 20% = 1,222 AC., HALF OF WHICH IS TO BE INDIGENOUS = 0.611 AC. (VS 0.653 AC. PROVIDED)

6. BUFFERING:

- A 5 FT. TYPE "A" BUFFER IS TO BE PROVIDED ALONG THE WEST PROPERTY LINE ADJACENT TO THE RAILROAD RIGHT-OF-WAY IN THE LOCATIONS SHOWN (GENERALLY IN LAKE AREA).
- A 15' TYPE "D" BUFFER WITH 8-FOOT WALL ALONG WEST PROPERTY LINE.
- A 5 FT. TYPE "A" BUFFER IS TO BE PROVIDED ALONG THE SOUTH PROPERTY LINE ADJACENT TO THE STORAGE FACILITY, LOCATED PER DEVIATION #3.
- MEDITERA HAS PROVIDED A BUFFER WITH THE LARGE PRESERVE ALONG THE EAST PROPERTY LINE THAT EXCEEDS TYPE "F" CRITERIA. PROJECT WILL PROVIDE A TYPE "D" BUFFER, WITH MODIFICATIONS PER DEVIATION #1, AS DESCRIBED AND SHOWN HEREON.

7. PROJECT PHASING:

AT THIS TIME, EACH BUILDING AND ASSOCIATED PARKING WILL CONSTRUCTED AS AN INDIVIDUAL PHASE. LANDSCAPING, STORMWATER, AND OTHER ANCILLARY IMPROVEMENTS WILL BE COMPLETED AS PART OF THE FIRST PHASE.

8. MASS TRANSIT:

THERE IS NO MASS TRANSIT IN THE VICINITY OF THE SUBJECT PROPERTY.

9. PARKING CALCULATIONS:

REQUIRED (BASED ON CURRENT DESIGN CONSIDERATIONS):

EXISTING COMMUNICATION FACILITIES & DEAD SPACE (ESSENTIAL SERVICES FACILITIES PER LDC 4-1732(4)(f)) = 1 SPACE (1 EMPLOYEE)

CONTRACTORS & BUILDERS (BASED ON CURRENT & PROPOSED USES):

OFFICE AREA PER 4-1732(2)(b) 1 SPACE PER 300 SF X 0.415

SF = 28 SPACES

SHORT-TERM STORAGE (PER 4-1732(3)(b)(i) 1 B&C UNIT, 2

EMPLOYEES/UNIT = 2 SPACES

SELF-STORAGE FACILITIES = ONE SPACE PER 3,000 SF OF FLOOR AREA (PER ZO 09-14 APPROVED DEVIATION #2, SAME DEVIATION IS REQUESTED UNDER THIS APPLICATION); 71,564 SF/2000 = 36 SPACES

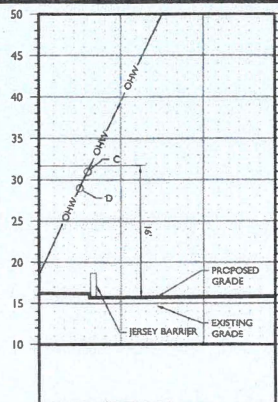
TOTAL REQUIRED: 55, INC. 3 MC SPACES (ONE BEING "N/A ACCESSIBLE")

PROVIDED: 64, INC 3 MC SPACES.

NOTE: DEVELOPER RESERVES THE RIGHT TO UTILIZE UP TO 46,866 SF FOR COMMERCIAL USES, AS APPROVED IN PREVIOUS REZONING. IF OTHER USES ARE SELECTED, PARKING CRITERIA WILL BE MET AND A REVISED TRAFFIC STUDY COMPLETED TO DETERMINE IF OTHER IMPACTS MIGHT OCCUR. THIS COULD BE COMPLETED AS AN ADMINISTRATIVE AMENDMENT TO THE ZONING, IF REQUESTED.

10. SURFACE WATER MANAGEMENT:

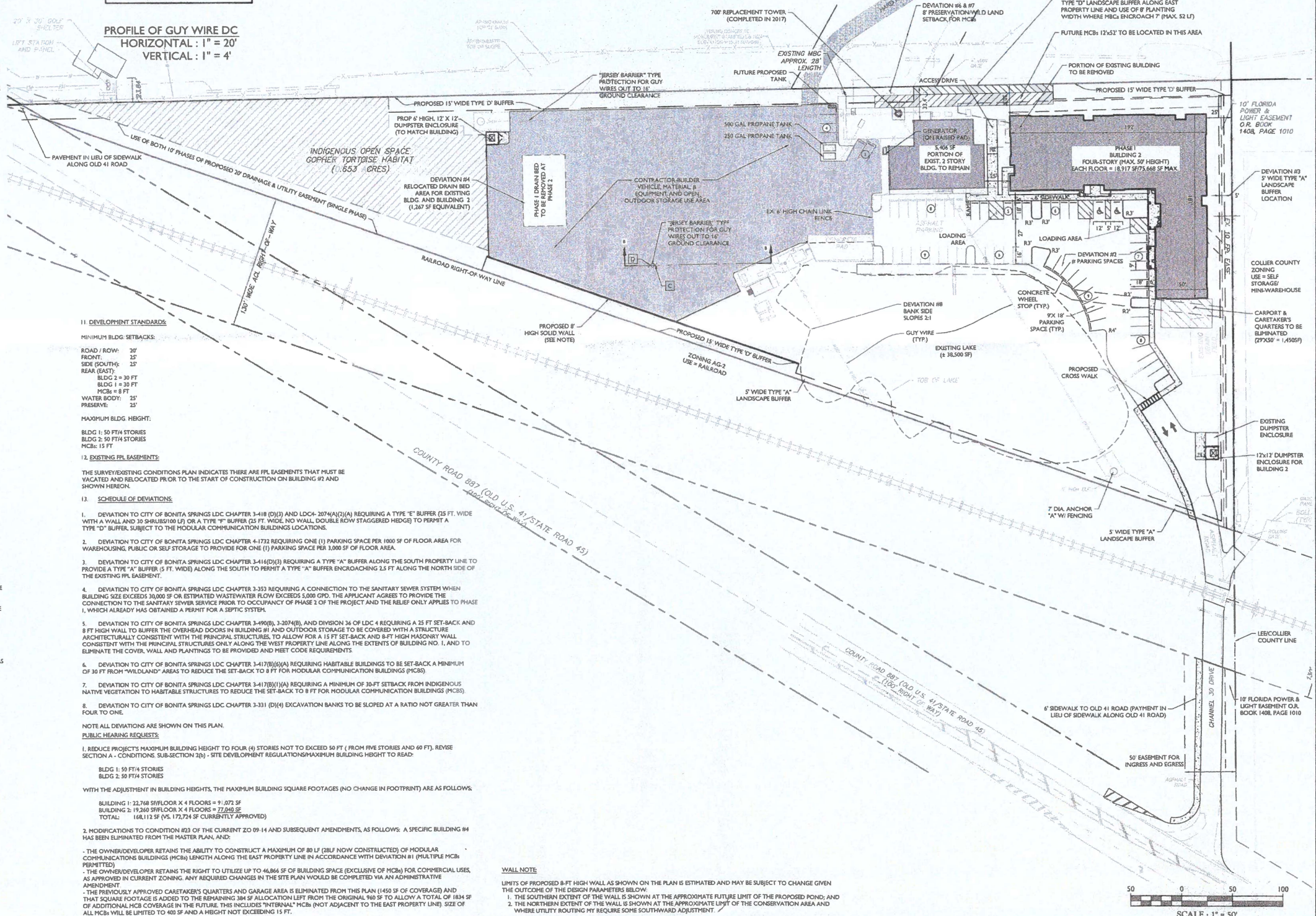
SURFACE WATER MANAGEMENT WILL BE CONSTRUCTED IN ACCORDANCE WITH CITY OF BONITA SPRINGS STANDARDS AND SPWD CRITERIA. AT THIS TIME, THE EXISTING LAKE WILL BE UTILIZED AS THE PRIMARY ON-SITE FACILITY WITH DISCHARGE TO THE OLD 41 ROAD DRAINAGE SWALE.



PROFILE OF GUY WIRE DC
HORIZONTAL: 1" = 20'
VERTICAL: 1" = 4'

GUY WIRE ELEVATIONS			
	PROPOSED GRADE	GUY WIRE ELEVATIONS	CLEARANCE
C	±15.2	31'	15.8'
D	±15.2	29'	13.8'

NOTE: MIN GUY WIRE CLEARANCES TO BE PROVIDED DURING DESIGN DEVELOPMENT BASED ON FINAL PROPOSED GRADES. ADEQUATE SAFETY MEASURE WILL BE PROPOSED AND COORDINATION WITH STAFF AT THAT TIME.



MASER CONSULTING P.A.
Customer Loyalty through Client Satisfaction
www.maserconsulting.com
Office Locations:

NEW JERSEY	FLORIDA
NEW YORK	PENNSYLVANIA
NEW MEXICO	NORTH CAROLINA
TEXAS	VIRGINIA
COLORADO	INDIANA
	ILLINOIS

State of FL Certificate of Authorization: 30301 / 187388

Copyright © 2008 Maser Consulting, All Rights Reserved. This drawing and all the information contained herein is intended for use only by the party for whom the services were contracted or to whom it is rendered. The drawing may not be copied, reprinted, disclosed, or relied upon for any other purpose without the express written consent of Maser Consulting, P.A.

811
Know what's below.
Call before you dig.
FOR STATE SPECIFIC DIRECT PHONE NUMBERS VISIT: WWW.CALL811.COM

PROTECT YOURSELF
ALL STATES REQUIRE NOTIFICATION OF EXCAVATORS, DISBURSERS, OR ANY PERSON ENGAGED TO DIGGING THE EARTH SURFACE ANYWHERE IN ANY STATE

REV	DATE	DESCRIPTION
1	9/10/20	REVISED SEPTIC DRAIN BED LOCATION
2	9/10/20	UPDATED PARKING COUNT
3	9/10/20	ADDED PHASE 1 SHEET 1 OF 2

STUART M. ROGERS
FLORIDA PROFESSIONAL ENGINEER - LICENSE NUMBER: 42718

PRELIMINARY SITE PLAN
FOR
SUPER TOWERS INC.

PARCEL ID:
03-48-25-B3-0000.0030

CITY OF BONITA SPRINGS
LEE COUNTY
FLORIDA

TAMPA OFFICE
5471 West Waters Avenue
Suite 100
Tampa, FL 33634
Phone: 813.287.1061
Fax: 813.281.1050

SCALE	DATE	DRAWN BY	CHECKED BY
AS SHOWN	12/26/19	INC	CL

PROJECT NUMBER	DRAWING NAME
11000020A	C-LAT

EXHIBIT IV-E-MCP
PHASE I SITE DEVELOPMENT & USE PLAN

SHEET NUMBER:
2 of 2

CITY OF BONITA SPRINGS
ZONING ORDINANCE NO. 09-14

A ZONING ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST BY CHANNEL 30 DRIVE COMMERCIAL CENTER TO REZONE FROM AGRICULTURAL (AG-2) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); ON LAND LOCATED AT 9930 CHANNEL 30 DRIVE, BONITA SPRINGS, FLORIDA, ON 6.11+/- ACRES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Channel 30 Drive Commercial Center has filed an application for rezoning 6.11 ± acres from Agricultural (AG-2) with Special Exception for a nursery to Commercial Planned Development (CPD) to allow for the existing communication towers and equipment (including the existing 4,470 SF building) to remain, the addition of two new modular communication buildings, the construction of up to 172,724 SF of building floor area and a caretaker's quarters. The building floor area will be utilized for up to 46,866 SF of commercial uses with the remaining space for a self-storage/mini-warehouse facility. Maximum building is five stories not to exceed 60 feet;

WHEREAS, the subject property is located at 9930 Channel 30 Drive, Bonita Springs, Florida, and is described more particularly as:

"See Exhibits"

WHEREAS, a Public Hearing was advertised and heard on October 2, 2009 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") on Case PD08-B0S00001 who gave full consideration to the evidence available and recommended approval (5-0, Healy & Brandeth absent); and gave full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all interested parties. The September 11, 2009 Staff Report prepared by Community Development and evidence submitted at the Zoning Board hearing is on file with the City Clerk.

NOW, THEREFORE, BE IT ORDAINED 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 rezoning with the following conditions and deviations:

A. Conditions

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Channel 30 Drive Commercial Planned Development", prepared by ConsulTech Development Services stamped

received June 4, 2009, except as modified by the conditions below. This development must comply with all requirements of the City of Bonita Springs Land Development Code (LDC) at the time of Development Order Approval, except as granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Animals:

Clinic

Kennel

Control center (including Humane Society)

Auto Parts Store

Automotive Repair and Service (Group I & II)

Boat storage, dry, not exceeding 18 feet above grade

Boat storage, dry, exceeding 18 feet above grade

Broadcast studio, commercial radio and television

Building material sales

Business Services (Group I & II)

Bus station/depot

Caretaker's residence

Caterers

Cleaning and maintenance services

Communication tower:

100 feet or less in height

Over 100 feet in height (existing only)

Contractors and Builders (Group I)

Entrance gates and gatehouse

Essential Services facilities (Group I)

Excavation, Water Retention

Farm equipment, sales, storage, rental, service

Feed or fertilizer, mixing and sales

Freight and cargo handling establishments

Laundry or Dry Cleaning (Group I & II)

Lawn and Garden Supply Store

Manufacturing, repair or wholesale sales of:

Apparel

Electrical machinery and equipment

Fabricated metal products (Group II)

Food and Kindred products (Group III)

Leather products (Group II)

Lumber and wood products (Groups II,)

Measuring, analyzing and controlling instruments

- Novelties, jewelry, toys and signs (Group I, II & III)
- Rubber and plastic products (Group II)
- Non-store retailers, (all Groups)
- Paint, glass and wallpaper
- Pet services
- Pet shop
- Plant nursery
- Post Office
- Printing and publishing
- Processing and warehousing
- Rental or Leasing Establishments (Group I, II & III)
- Repair Shops (Group I, II & III)
- Research and development laboratories (Group II, IV)
- Residential accessory uses
- Retail and wholesales, when clearly incidental and subordinate to a permitted use on the same premises
- Signs in accordance with Chapter 6
- Storage:
 - Indoor
 - Storage, open
- Studios
- Temporary uses
- Transportation services (Group II)
- Vehicle and equipment dealers (Group I & II)
- Warehouse:
 - Mini-warehouse
 - Private
 - Public
- Wholesale establishment (Groups I & III)

b. Site Development Regulations

Minimum Area Dimension:

- Lot Area: 6.109 ± acres
- Lot Depth: As shown on MCP
- Lot Width: As shown on MCP

Minimum Building Setbacks:

- Road / ROW: 20 FT
- Front: 25 FT
- Side (East): BLDGS 1 & 2 = 25 FT
3 & 4 = 8 FT
- Rear (South): 20 FT
- Waterbody: 25 FT
- Preserve: 25 FT
- Minimum Building Separation: 25 FT

Maximum Building Height:	BLDG 1: 60 FT/5 stories BLDG 2: 40 FT/3 stories BLDG 3: 15 FT/1 story BLDG 4: 15 FT/1 story
Maximum Lot Coverage:	40%
Minimum Open Space	20%

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the City of Bonita Springs LDC may be required to obtain local development order.
4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the City of Bonita Springs Comprehensive Plan provisions.
5. This development must comply with all of the requirements of the LDC at the time of the local development order approval, except as may be granted by deviation approved as part of this planned development.
6. Development must include sidewalks as a site related improvement. Such facilities must be included in local development orders as part of the project's infrastructure, and as part of any vertical development.
7. The development must comply with the commercial lighting standards found in the LDC, Chapter 3. Street, parking lot and building lighting must be shielded so that light is directed downward to reduce spillage to off-site parcels.
8. Prior to local development order approval the developer must provide facilities in compliance with the Bonita Springs LDC for the pickup/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of local development order application for vertical development.
9. The developer will use best efforts to incorporate principles for its building through the Florida Green Building Coalition program, in site design and construction, by emphasizing use of high energy efficiency designs and use of high energy efficient fixtures and appliances where possible. Building materials, both internal and external, will be comprised of durable and recycled materials where possible.
10. Utilization of one hundred (100) percent native vegetation planting within all required landscaping, restoration, creation, and enhanced

preservation areas. The applicant may install non-native plantings for accent above the required plantings in landscaped areas only.

11. Prior to local development order approval, a tree survey shall be required when appropriate, to determine if the site contains Heritage Trees. If the site contains Heritage Trees, an appearance before the Tree Advisory Board prior to the issuance of a development order is required.
12. Development orders for this project shall be required to provide an additional 50% retention/detention for water quality treatment systems, Policy 9.3.3 Bonita Springs Comprehensive Plan, and shall use a treatment train approach, incorporating Best Management Practices, according to Policy 9.3.1., Bonita Springs Comprehensive Plan.
13. All plants which are on the *Florida Exotic Pest Plant Counsel's 2007 List of Invasive Plant Species, Category 1* list, shall be removed from the project area, including conservation, open space and developed areas. The site shall be maintained free of plants on the Florida Exotic Pest Plant Counsel's 2007 List of Invasive Plant Species, Category 1 list in perpetuity.
14. Prior to local development order approval, development order plans must depict the xeric oak community within the preserve area as "Gopher Tortoise Preserve", and any gopher tortoises found on site shall be placed into this preserve. If the amount of tortoises exceeds the FFWCC guidelines for the preserve area, the "extra" tortoises may be relocated offsite by obtaining a Florida Fish and Wildlife Conservation Commission (FFWCC) relocation permit. The applicant must first seek approval for preservation of gopher tortoises in place before pursuing off-site relocation options.

Any gopher tortoises and commensal species found during burrow excavation must be moved to preserves containing suitable gopher tortoise habitat as approved by the Florida Fish and Wildlife Conservation (FFWCC) and City of Bonita Springs Environmental Sciences staff.
15. The 0.653± acre environmentally sensitive xeric oak community, FLUCFCS Code 421, shall be preserved. A conservation easement shall be placed on this area to preserve it in perpetuity. The conservation easement shall be dedicated to the City of Bonita Springs with no responsibility for maintenance.
16. A Twisted Air Plant, which is listed by the Florida Dept of Agriculture as Threatened, is located in the pine flatwoods adjacent to the xeric oak

community. This plant shall be protected by preserving a 10' buffer around the staggerbush shrub which the plant is growing on.

17. A listed species management plan for the preserve area shall be required at the time of development order. The management plan shall address the Twisted Air Plant, the gopher tortoises, and exotic plant and animal species control in the preserve area.
18. All required landscaping for the Type "A" buffer will be placed in the 2.5 foot buffer on the northern side of the FP&L easement and will be maintained to prevent encroachment.
19. As part of the development order submittal an intersection analysis will be preformed for Channel 30 Drive and Old 41 road. This will be used to determine the length of turn lanes on Old 41 accessing the site.
20. The applicant will enter into a developer's agreement prior to development order approval to determine proportionate fair share of necessary off-site improvements to Old 41 and the Seminole Gulf Railroad / CSX railroad crossing.
21. Parking for the Warehousing, public or self storage:
 - a. The applicant must provide a minimum of one (1) parking space per 3,000 square feet of gross floor area. Should City Council make a determination, at a meeting where the current Owner of record is given notice that this parking is not meeting the operational requirements, the Owner must provide additional parking consistent with the Land Development Code (LDC) for the use; and
 - b. Parking spaces approved through this deviation are for the warehousing, public or self storage uses only; and
 - c. No parking spaces or loading zones required for the warehousing, may be utilized for the Business Services Group I & II, communications buildings, caretaker's quarters; and
 - d. Overnight parking of is not permitted within designated parking spaces.
22. The proposed 20' utility easement line shown on the current MCP shall be approved in 2 phases so as to deal with the constrained physical site limitations in protecting the gopher tortoises and protecting the buffer. First phase will include the western most 10' for stormwater / utilities. Phase II shall include the additional 10'. The approval of phase II shall be conditioned upon a new evaluation to determine the number and

health of gopher tortoises, and the quality of the xeric preserve. If the additional 10' is sought for Phase II, this request can be made administratively. The utility easement along the western side of the Gopher Tortoise preserve shall remain at the same grade as the preserve and consist of under ground utilities. After completion of the underground utilities, this area shall be planted with gopher tortoise friendly xeric plants. A minimum of 6 different native plant species shall be used (three different shrubs and three different groundcovers). Shrubs shall be planted on 5' centers and groundcover massings shall be planted on 1' centers. Appropriate plants shall consist of gopher apple, wiregrass, butterfly peas, gall berry, prickly pear cactus, paw paw and palmettos. A planting plan shall be submitted to the Community Development Department for review and approval.

23. The proposed pre-fabricated modular communications buildings identified as 3 & 4 on the Master Concept Plan may be modified to allow more than 2 buildings in this location, as long as the total square footage does not exceed 960 square feet nor can any of the buildings be greater than 12 feet wide.
24. The property will be required to water and sewer hook-up prior to certificate of completion when the flow generated to the septic drain bed exceeds 3,200 square feet capacity for the drain bed.

B. Deviations

Deviation 1 is approved, granting relief from LDC §3-416(D)(3) which requires a type "E" buffer (25 ft. wide with a wall) or a type "F" buffer (30 ft wide with no wall) to permit a type "D" buffer (8 ft wide), subject to the proposed septic system and the modular communication building locations, as long as the required number of plantings for the type "D" buffer is placed within the proposed 8 FT.

Deviation 2 is approved, granting relief from LDC §34-2020, parking requirements of one (1) parking space per 1000 SF of area for warehousing, public or self storage to have one (1) parking space per 3000 SF of area, subject to Condition 21.

Deviation 3 is approved, granting relief from LDC §3-416(D)(3) which requires a type "A" buffer (5 FT wide) along the south property line to provide a type "A" buffer encroaching 2.5 FT along the north side of the existing FP&L easement, subject to Condition 18.

C. Findings and Conclusions:

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

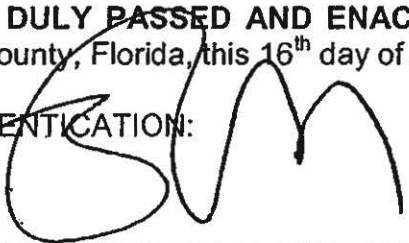
1. The applicant has proven entitlement to the rezoning of a Commercial Planned Development (CPD) by demonstrating compliance with the Bonita Springs Comprehensive Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested CPD zoning, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the City of Bonita Springs Comprehensive Plan.
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Bonita Springs Comprehensive Plan, are, or will be, available and adequate to serve the proposed land use.
5. As conditioned, the proposed uses are appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
8. The deviations granted, as conditioned:
 - a) enhance the objectives of the planned development; and
 - b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

SECTION TWO: EFFECTIVE DATE

This ordinance shall take effect thirty (30) days from the date of adoption.

DULY PASSED AND ENACTED by the Council of the City of Bonita Springs,
Lee County, Florida, this 16th day of November, 2009.

AUTHENTICATION:

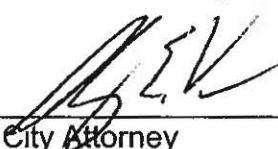


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Ferreira	Aye	Nelson	Aye
Lonkart	Aye	Simons	Aye
McCourt	Aye	Spear	Aye
Martin	Aye		

Date filed with City Clerk: 11-16-09

LEGAL DESCRIPTION
FOR
9930 CHANNEL 30 DRIVE., BONITA SPRINGS, FL 34135
(STRAP NO. 03-48-25-B3-00001.0030)

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY); SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT:
A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

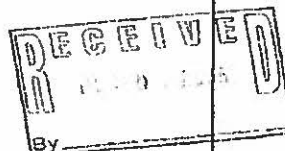
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

CONTAINING 8.109 ACRES.

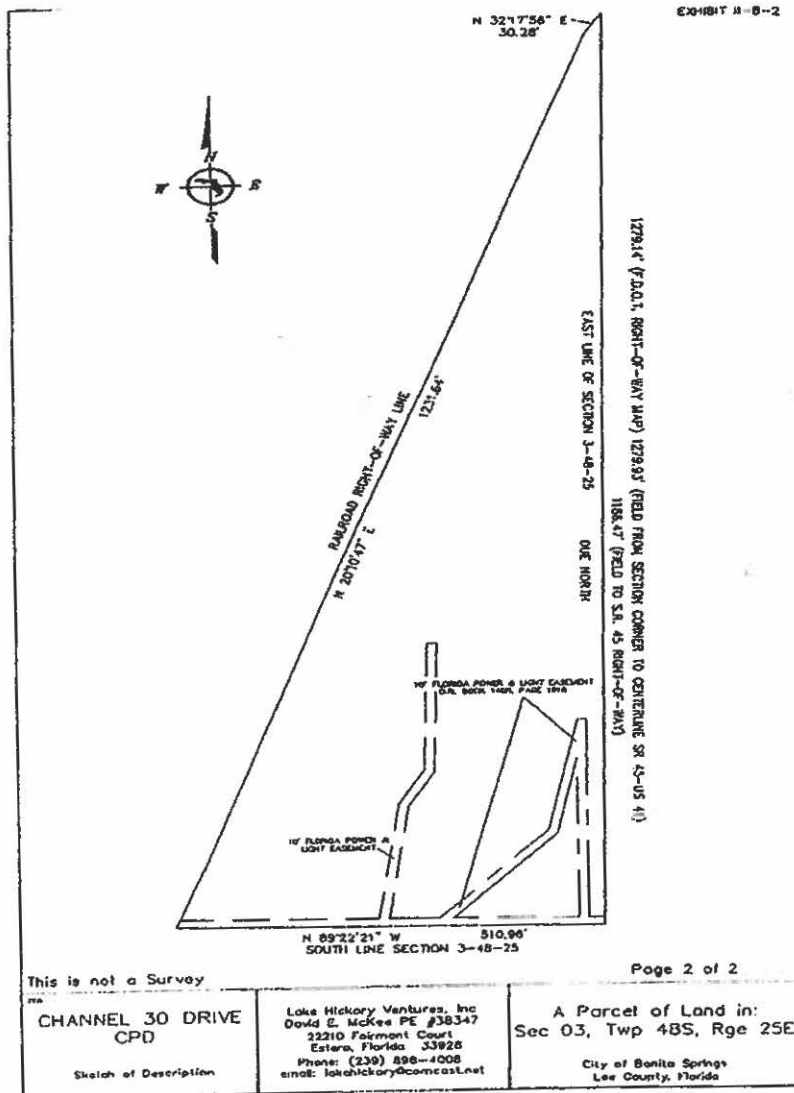
David E. McKee 5/20/08
DAVID E. MCKEE
PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO: PE38347

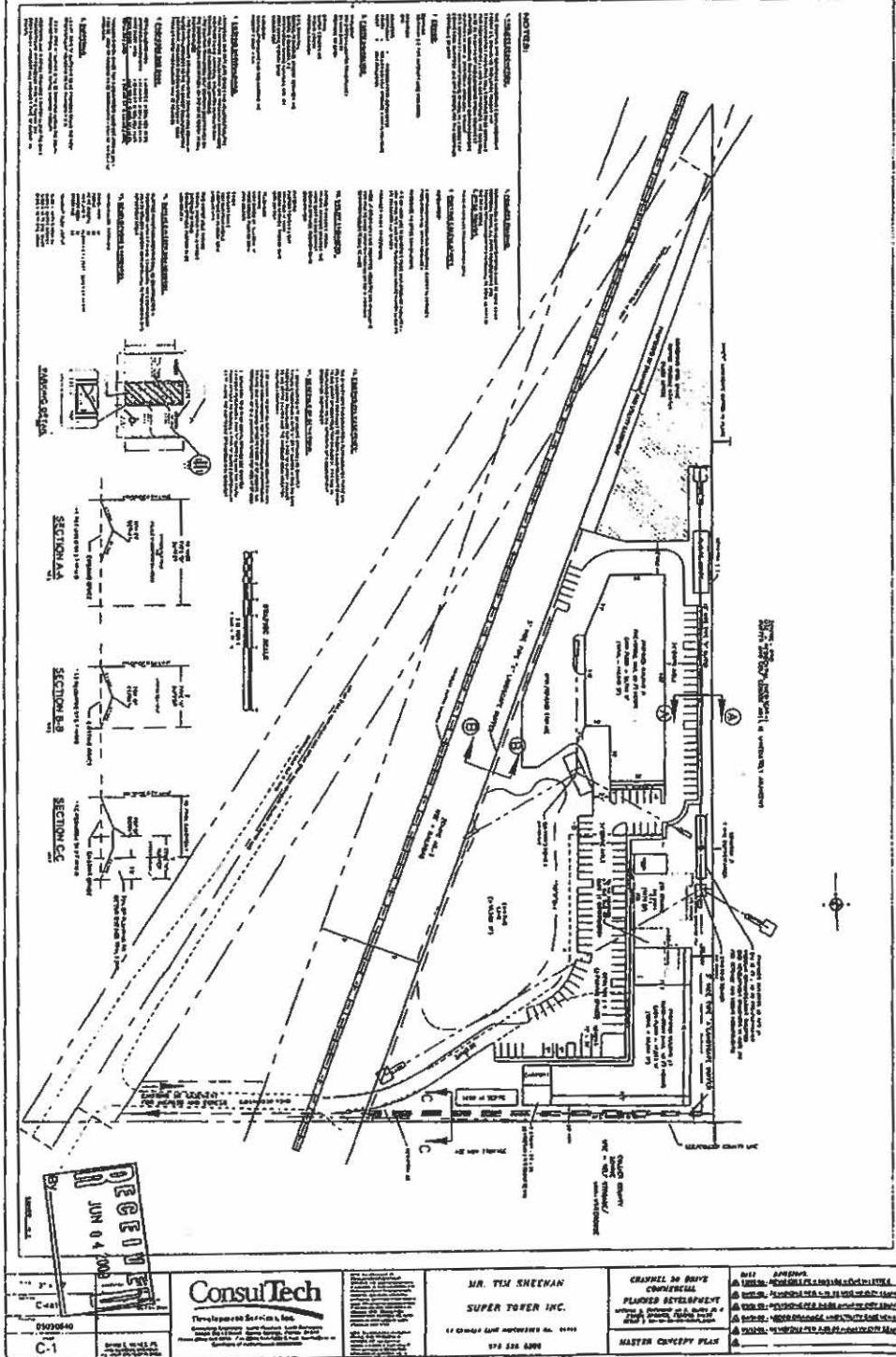


This is not a Survey

Page 1 of 2

for CHANNEL 30 DRIVE CPD Legal Description	Lake Hickory Ventures, Inc David E. McKee PE #38347 22210 Fairmont Court Estero, Florida 33928 Phone: (239) 898-4808 email: lakehickory@comcast.net	A Parcel of Land in: Sec 03, Twp 48S, Rge 25E City of Bonita Springs Lee County, Florida
---	--	---





**ADMINISTRATIVE AMENDMENT ADD13-05141-BOS
TO CHANNEL 30 DRIVE COMMERCIAL CENTER CPD**

**ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA**

WHEREAS, McKee Engineering Consultants, Inc filed an application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan (MCP) for the project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14; and

WHEREAS, the subject property is located in the Industrial District future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the applicant is requesting to replace the existing aging communication tower, make some minor changes in the modular communication buildings and add one additional generator; and

WHEREAS, Zoning Ordinance No. 09-14 allows for communication towers over 100' feet in height (existing only); and

WHEREAS, Zoning Ordinance No. 09-14 lists no conditions relative to the maintenance and or replacement of the existing communication tower; and

WHEREAS, the applicant wishes to be replace the existing aging communication tower with a new tower; and

WHEREAS, the existing tower will remain in service while the new tower is being built in order for the continued operation of the existing radio and cell phone antennas during construction of the new tower; and

WHEREAS, the new tower will be constructed approximately 13 feet north of the existing tower; and

WHEREAS, the height of the new tower will be the same as the existing tower; and

WHEREAS, the existing tower will be demolished once the replacement tower is constructed and existing communication antennas are relocated; and

WHEREAS, the applicant wishes to demolish and replace the existing modular communication buildings, which does not increase the total square footage permitted; and

WHEREAS, the applicant wishes to add one additional generator to support the replacement communication tower; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses; and

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on April 22, 2013 ("Attachment A").
2. The proposed setbacks for the replacement communication tower are as follows:
 - North property point/corner: from 853' to 840'
 - East property line: Same
 - South property line: 13' farther away
 - West property line: from 300' to 296'
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land

Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

4. The applicant must submit a Limited Development Order prior to construction reflecting these modifications and a construction schedule for the replacement tower and demolition of the existing tower.
5. Forty-eight hours before commencing construction of the replacement communication tower, and within 48 hours after the antenna-supporting structure reaches its maximum height, the Lee Port Authority, Sheriff's Office, Emergency Medical Services, the local fire district and the Lee County Mosquito Control District must be notified by the entity constructing the antenna-supporting structure.
6. The existing tower must be fully disassembled and removed within 90 days of the completion of the new tower and transfer of equipment.
7. The relocation of any future replacement tower facilities may be handled administratively as long as the replacement tower is constructed for the same purpose as the existing tower, does not require additional towers and is not greater in height.
8. If high voltage is necessary for the operation of proposed wireless communication facilities, High Voltage-Danger and No Trespass warning signs not greater than one (1) square foot in area must be permanently attached to the fence or wall at intervals of not less than forty (40) feet and upon the access gate, or as otherwise required by the FAA or FCC.

DULY signed this 6 day of June, A.D., 2013

BY: _____

John Dulmer, AICP, Community Development Director

Department of Community Development

LEGAL DESCRIPTION
FOR
9930 CHANNEL 30 DRIVE., BONITA SPRINGS, FL 34135
(STRAP NO. 03-48-25-B3-00001.0030)

THAT PART OF SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING EAST OF THE ACL RIGHT-OF-WAY (SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY); SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

SUBJECT TO THE FOLLOWING DESCRIBED FLORIDA POWER AND LIGHT EASEMENT:
A 10 FEET WIDE FLORIDA POWER AND LIGHT EASEMENT LYING WITHIN SECTION 3, TOWNSHIP 48 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE NORTH 89°22'21" WEST, ALONG THE SOUTH LINE OF SAID SECTION 3, 228.87 FEET, TO THE POINT OF BEGINNING OF A 10 FEET WIDE POWERLINE EASEMENT, LYING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

1. THENCE NORTH 07°56'11" EAST, 157.75 FEET;
2. THENCE NORTH 29°44'30" EAST, 51.55 FEET;
3. THENCE NORTH 01°10'19" EAST, 177.01 FEET, TO THE END OF SAID CENTERLINE.

AND SUBJECT TO THE FLORIDA POWER & LIGHT EASEMENT AS DESCRIBED GRAPHICALLY IN OFFICIAL RECORDS BOOK 1408, PAGES 1010-1011, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND DEPICTED HEREON.

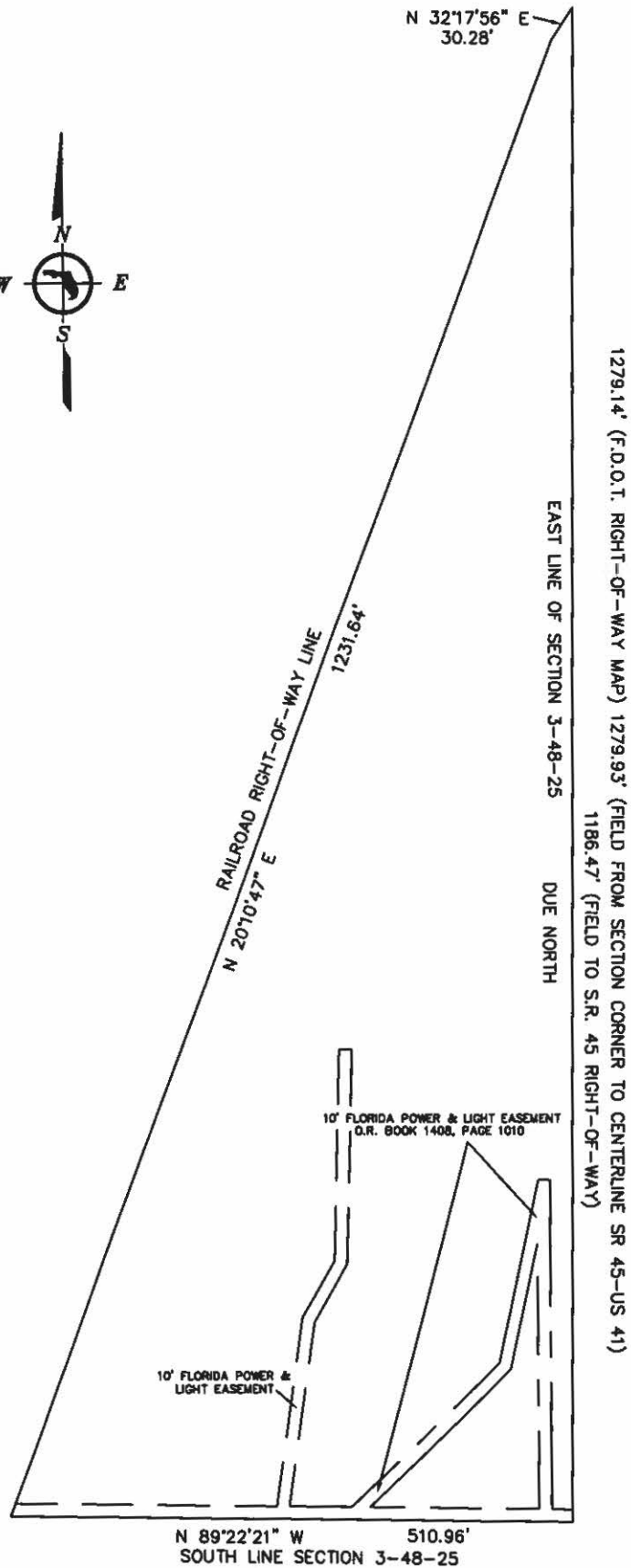
CONTAINING 6.109 ACRES.

DAVID E. MCKEE
PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO: PE38347

This is not a Survey

Page 1 of 2

for CHANNEL 30 DRIVE CPD Legal Description	Lake Hickory Ventures, Inc David E. McKee PE #38347 22210 Fairmont Court Estero, Florida 33928 Phone: (239) 898-4008 email: lakehickory@earthlink.net	A Parcel of Land in: Sec 03, Twp 48S, Rge 25E City of Bonita Springs Lee County, Florida
---	--	--



This is not a Survey

Page 2 of 2

FOR
CHANNEL 30 DRIVE
CPD

Sketch of Description

Lake Hickory Ventures, Inc
David E. McKee PE #38347
22210 Fairmont Court
Estero, Florida 33928
Phone: (239) 898-4008
email: lakehickory@aol.com
8/2/19

A Parcel of Land in:
Sec 03, Twp 48S, Rge 25E

City of Bonita Springs
Lee County, Florida

- EXISTING TOWER WILL REMAIN IN PLACE UNTIL NEW TOWER IS COMPLETE AND ALL ELECTRICAL AND COMMUNICATION CONNECTIONS ARE READY TO BE MADE. EXISTING RADIO STATIONS AND CELL PHONE SERVICE DISRUPTIONS MUST BE MINIMIZED.
- NEW GUY WIRES WILL BE CONNECTED TO NEW ANCHORS THAT WILL BE INSTALLED JUST IN FRONT OF THE EXISTING ANCHORS (BETWEEN THE TOWER AND EXISTING ANCHOR). EXISTING ANCHORS WILL BE REMOVED TO JUST BELOW GRADE.
- NEW TOWER HEIGHT SHALL BE THE SAME AS THE EXISTING TOWER: 681'-10" ABOVE GRADE WITH AN ADDITIONAL 53'-10" ANTENNA ON TOP WITH LIGHTED BEACON.
- AS SHOWN ON THE DRAWING, THE GUY WIRES WILL STILL BE WITHIN THE LEASED AREA ON THE PROPERTY TO THE EAST.



PROJECT

Channel 30 Drive Commercial Center
Administrative Amendment; ZO 09-14/P008-80500001
89930 Channel 30 Drive
Bonita Springs, FL 34135
Mr. Mike Sanyal 308/317-1753

McKee Engineering Consultants, Inc.
(fka Lake Hickory Ventures, Inc.)

Engineering Permitting Land Development
22210 Fairmont Court Celena, IL 60828
Phone (312) 866-4528 Fax (312) 495-5008 email mcdougall@turner.net
CORPORATE OF AUTHORIZATION 677445

DAVID E. McKEE
NATIONAL GUARDIAN
S. 10000 10000 10000

ADMINISTRATIVE AMENDMENT ADD16-26594-BOS
TO CHANNEL 30 DRIVE COMMERCIAL CENTER CPD

ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA

WHEREAS, McKee Engineering Consultants, Inc. filed an application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add generators as depicted on the attached revised Master Concept Plan (MCP) for the project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14; and

WHEREAS, the subject property is located in the Industrial District future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the applicant is requesting to replace the existing aging communication tower, make some minor changes in the modular communication buildings and add additional generators; and

WHEREAS, Zoning Ordinance No. 09-14 allows for communication towers over 100' feet in height (existing only); and

WHEREAS, Zoning Ordinance No. 09-14 lists no conditions relative to the maintenance and or replacement of the existing communication tower; and

WHEREAS, the applicant wishes to be replace the existing aging communication tower with a new tower; and

WHEREAS, the existing tower will remain in service while the new tower is being built in order for the continued operation of the existing radio and cell phone antennas during construction of the new tower; and

WHEREAS, the new tower will be constructed approximately 34.9 feet northwest of the existing tower; and

WHEREAS, the height of the new tower will be the same as the existing tower; and

WHEREAS, the existing tower will be demolished once the replacement tower is constructed and existing communication antennas are relocated; and

WHEREAS, the applicant wishes to demolish and replace the existing modular communication buildings, which does not increase the total square footage permitted; and

WHEREAS, the applicant wishes to add one additional generator to support the replacement communication tower; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses; and

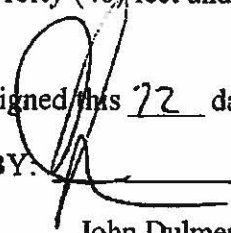
NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to replace the existing communication tower, make some minor changes in the modular communication buildings and add another generator as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on January 4, 2016 ("Attachment A").
2. The proposed setbacks for the replacement communication tower are as follows:
 - North property point/corner: from 893.8' to 860.1'
 - East property line: from 15.4' to 26.3'
 - South property line: from 292.6' to 326.5'
 - West property line: from 300.8' to 278.8'
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land

Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

4. The applicant must submit a Limited Development Order prior to construction reflecting these modifications and a construction schedule for the replacement tower and demolition of the existing tower.
5. Forty-eight hours before commencing construction of the replacement communication tower, and within 48 hours after the antenna-supporting structure reaches its maximum height, the Lee Port Authority, Sheriff's Office, Emergency Medical Services, the local fire district and the Lee County Mosquito Control District must be notified by the entity constructing the antenna-supporting structure.
6. The existing tower must be fully disassembled and removed within 90 days of the completion of the new tower and transfer of equipment.
7. The relocation of any future replacement tower facilities may be handled administratively as long as the replacement tower is constructed for the same purpose as the existing tower, does not require additional towers and is not greater in height.
8. If high voltage is necessary for the operation of proposed wireless communication facilities, High Voltage-Danger and No Trespass warning signs not greater than one (1) square foot in area must be permanently attached to the fence or wall at intervals of not less than forty (40) feet and upon the access gate, or as otherwise required by the FAA or FCC.

DULY signed this 22 day of JANUARY, A.D., 2016

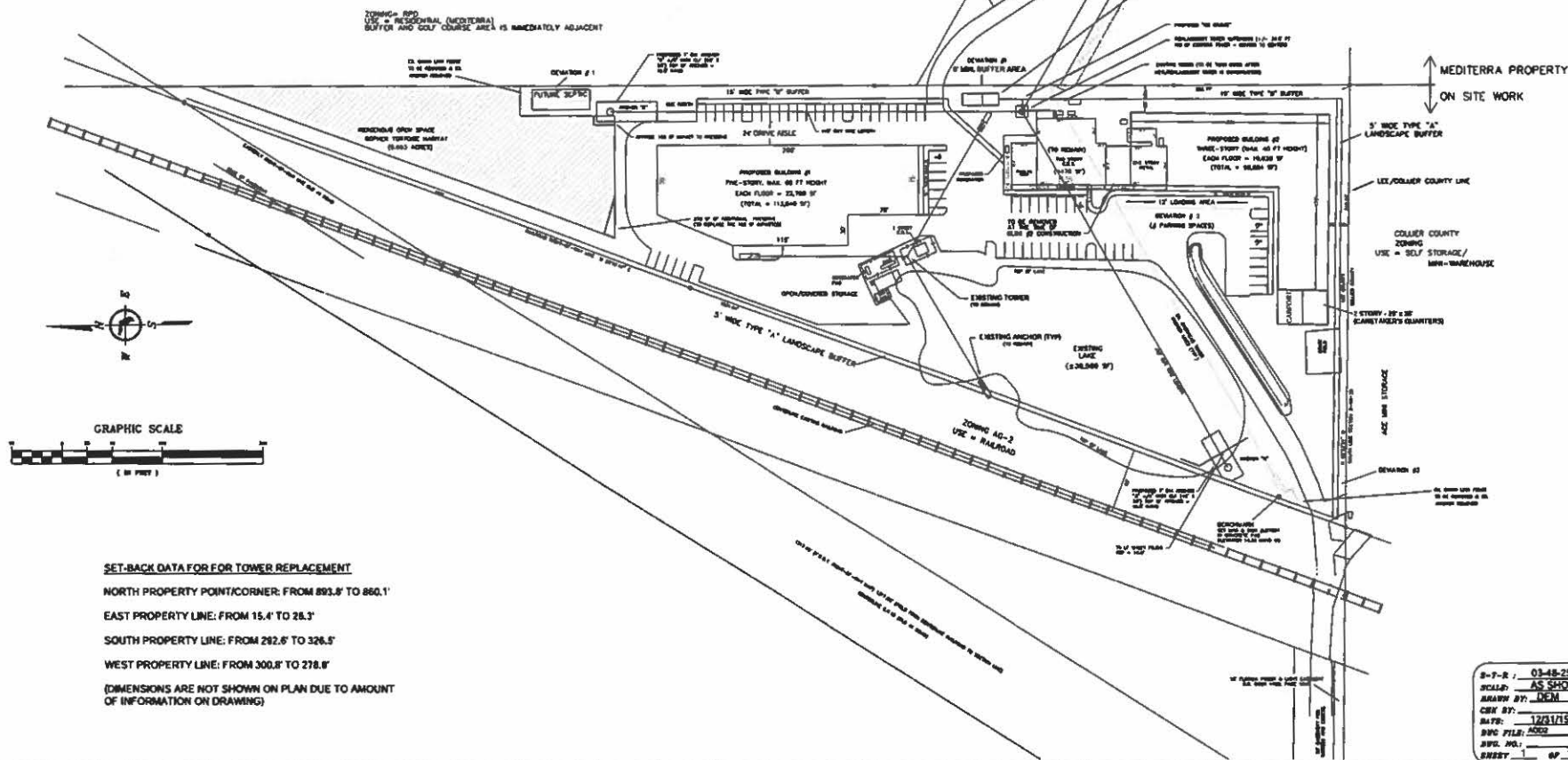
BY: 

John Dulmer, AICP, Community Development Director

Department of Community Development

NOTES REGARDING TOWER RELOCATION/REPLACEMENT:

- EXISTING TOWER WILL REMAIN IN PLACE UNTIL NEW TOWER IS COMPLETE AND ALL ELECTRICAL AND COMMUNICATION CONNECTIONS ARE READY TO BE MADE. EXISTING RADIO STATIONS AND CELL PHONE SERVICE DISRUPTIONS MUST BE MINIMIZED.
- NEW TOWER HEIGHT SHALL BE THE SAME AS THE EXISTING TOWER: 881'-10" ABOVE GRADE WITH AN ADDITIONAL 53'-10" ANTENNA ON TOP WITH LIGHTED BEACON.
- ORDER ON THE WESTERLY PARCEL IS REQUIRED FOR THE REQUIRED PERMITS AND APPROVALS, WHICH MUST BE OBTAINED AS PART OF A LIMITED REVIEW DEVELOPMENT PROCESS.
- THE PLACEMENT OF ANCHOR-"B" REQUIRES A SMALL ADJUSTMENT IN THE INDIGENOUS AREA, AS SHOWN ON THIS PLAN. THERE IS A NET INCREASE OF 40 SF IN PRESERVE AREA.
- PARKING REVISIONS BROUGHT ABOUT BY THE TOWER LOCATION REQUIREMENTS SHOULD REDUCE THE NUMBER OF PARKING SPACES AS SHOWN ON THIS PLAN THAT MEETS THE MINIMUM NUMBER REQUIRED BY THE CURRENT ZONING FOR PUBLIC STORAGE FACILITIES.



ACCEPTED

25

McKee Engineering Consultants, Inc.

Admin, Amend. to ZO 09-14/PD08-BOS00001
9930 Channel 30 Drive & ADD13-05141-BOS
Bontla Springs, FL 34135
Mike Sawyer, Phone #508/317-1753

Engineering Permitting Lead Development
22210 Fairmont Court Estero, FL 33428
Phone (239) 888-4008 Fax (239) 493-3006
email: mick@engpermits.com

with

DAVID R. MCKEE
MANAGEMENT CONSULTANT

3-7-R : 03-48-25
SCALE: AS SHOWN
DRAWN BY: DEM
CHK BY:
DATE: 12/31/15
DWG FILE: A002
DWG NO.:
SHEET 1 OF 1

ADMINISTRATIVE AMENDMENT ADD18-53020-BOS (PD)

**ADMINISTRATIVE ACTION
BONITA SPRINGS, FLORIDA**

WHEREAS, McKee Engineering Consultants, Inc. filed an application for administrative approval to amend the Master Concept Plan (MCP) in accordance with Condition 22 of Zoning Ordinance No. 09-14 for a project known as Channel 30 Drive Commercial Center Commercial Planned Development (CPD) for property located at 9930 Channel 30 Drive, described more particularly as:

LEGAL DESCRIPTION: Section 03, Township 48 South, Range 25 East, Bonita Springs, Florida:

See attached Exhibit A

WHEREAS, Super Towers, Inc., the owner of the subject property, has authorized David E. McKee, P.E. of McKee Engineering Consultants, Inc. to act as the agent to pursue this administrative action request; and

WHEREAS, the property was originally rezoned in 2009, by the City of Bonita Springs Zoning Ordinance No. 09-14 with subsequent amendments in ADD13-05141-BOS and ADD16-26594-BOS; and

WHEREAS, the subject property is located in the Industrial future land use category as designated by the Bonita Springs Comprehensive Plan; and

WHEREAS, the applicant is requesting to amend the Master Concept Plan in accordance with Condition 22 of Zoning Ordinance No. 09 14; and

WHEREAS, Condition 22 required a new evaluation to determine the number and health of the site's gopher tortoises, and the quality of the site's xeric preserve, when Phase II of the utility and drainage easement is utilized; and

WHEREAS, the applicant is in the process of coordinating with Bonita Springs Utilities (BSU) for the installation of a water main to provide domestic and fire protection water services utilities, as well as, piping infrastructure for a future wastewater force main for the project site within the subject easement; and

WHEREAS, the applicant has submitted a gopher tortoise and preserve area evaluation that has been reviewed and accepted by Environmental Sciences; and

WHEREAS, the City of Bonita Springs Land Development Code (LDC) provides for certain administrative changes to planned development master concept plans; and

WHEREAS, the subject application and plans have been reviewed by the City of Bonita Springs Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval to modify the existing drainage and utility easement as well as the abutting preserve area as depicted on the attached revised Master Concept Plan for the project known as Channel 30 Drive Commercial Planned Development is APPROVED, subject to the following conditions:

1. The administrative amendment is limited to the revisions as identified on the revised Master Concept Plan, stamped received on May 03, 2019 ("Attachment A").
2. As a condition of approval for the requested site improvements, any excessive removal of mature vegetation will require additional mitigation plantings (trees, shrubs and ground covers) within the site's exiting preserve area, subject to review and approval by Environmental Sciences.
3. No other changes have been authorized as part of this amendment and development must remain in compliance with Bonita Springs Zoning Ordinance No. 09-14 and Land Development Code. The terms and conditions of the original zoning ordinance remain in full force and effect.

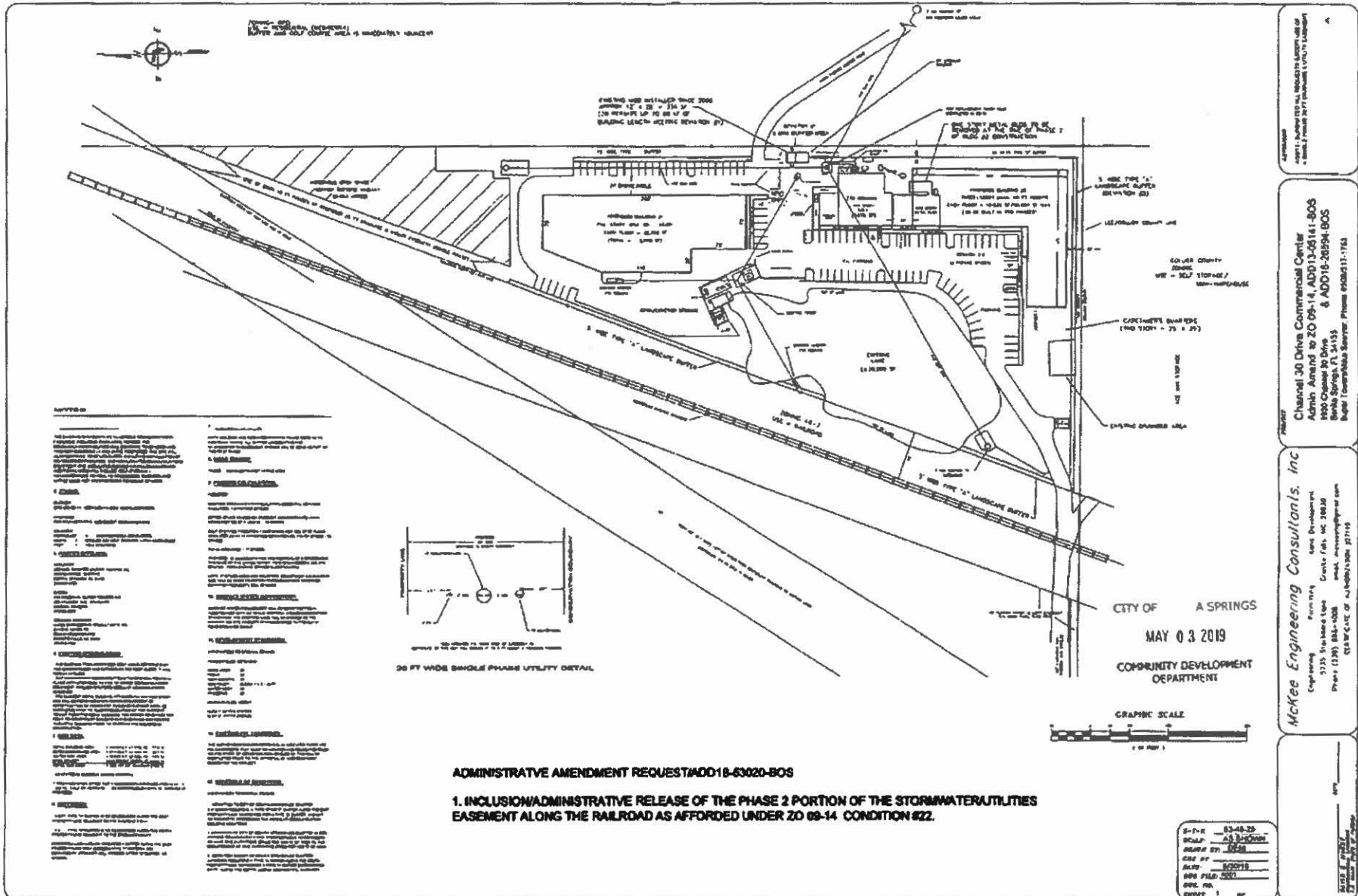
DULY sig day of A.D., 2019

BY

..... Jmer, AICP, Community Development Director

Department of Community Development

Attachment "A"



BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-351
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Approve Resolution of the City of Bonita Springs, Florida; confirming the results of the Lee County Canvassing Board in conjunction with the November 3, 2020 election.			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	Debra Filipek City Clerk
☒	CONSENT	☐	
☐	PUBLIC HEARING	☐	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☐	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS		
☐	CITY ATTORNEY ITEMS		
☐	CITY MANAGER ITEMS		
BACKGROUND:			
The City of Bonita Springs held a municipal election on November 3, 2020 for Mayor and City Council Districts 2, 4 and 6. Attached is the Certificate of the Canvassing Board confirming the results of the election. Attachments: Resolution Certificate of Canvassing Board			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☐ YES ☒ NO IF YES, WHICH STRATEGIC OBJECTIVE?			
STAFF RECOMMENDATIONS: Approve Resolution confirming the results of the November 3, 2020 election.			
REVIEWED BY:			
City Manager:		<u>Arleen Hunter</u>	
City Attorney:		<u>Derek Rooney</u>	
City Clerk:		<u>Debra Filipek</u>	
Department Director:		_____	
COUNCIL ACTION:			
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY OF BONITA SPRINGS, LEE COUNTY, FLORIDA; CONFIRMING THE RESULTS OF THE LEE COUNTY CANVASSING BOARD IN CONJUNCTION WITH THE NOVEMBER 3, 2020 ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs held a municipal election on November 3, 2020, for Mayor and City Council Districts 2, 4 and 6;

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

Section One: The City Council of the City of Bonita Springs hereby confirms the Certificate of Canvassing Board, Bonita Springs Election, November 3, 2020 for Mayor and City Council Districts 2, 4 and 6, a copy of which is attached hereto and incorporated by reference.

Section Two. This Resolution shall become effective immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Bonita Springs, Lee County, Florida, this 18th day of November, 2020.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Quaremba
Purdon
Carr
Corrie

Gibson
Steinmeyer
Forbes

Date filed with City Clerk: _____

****Official Results****

CERTIFICATE OF COUNTY CANVASSING BOARD
LEE COUNTY
MUNICIPAL ELECTION HELD IN CONJUNCTION WITH THE
GENERAL ELECTION
CITY OF BONITA SPRINGS REGULAR ELECTION
November 3, 2020

State of Florida, County of Lee
 City of Bonita Springs

We, the undersigned, ZACHARY M. GILL, County Judge, BRIAN HAMMAN, County Commissioner, and, TOMMY DOYLE, Supervisor of Elections, constituting the Board of County Canvassers in and for said City, do hereby certify that we met on the Thirteenth day of November, A.D., 2020, and proceeded publicly to canvass the votes given for the offices and persons herein specified at the **City of Bonita Springs, Regular Election** held on the Third day of November, A.D., 2020, as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

For City of Bonita Springs, Mayor, the whole number of votes cast was 25,322
 of which:

Omer Dror (NON) received 12,134 votes

Rick Steinmeyer (NON) received 13,188 votes

For City of Bonita Springs, City Council District 2, the whole number of votes cast was 2,795
 of which:

Shelley D. Anderson (NON) received 1,344 votes

Jesse Purdon (NON) received 1,451 votes

For City of Bonita Springs, City Council District 4, the whole number of votes cast was 5,540
 of which:

Chris Corrie (NON) received 3,458 votes

Lynda M. Waterhouse (NON) received 2,082 votes

For City of Bonita Springs, City Council District 6, the whole number of votes cast was 6,225
 of which:

Mike Danieli (NON) received 3,003 votes

Fred Forbes (NON) received 3,222 votes

Signed this Thirteenth day of November, A.D., 2020:


 Lee County Judge, Zachary M. Gill


 Lee County Commissioner, Brian Hamman


 Lee County Supervisor of Elections, Tommy Doyle

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-345								
AGENDA ITEM SUMMARY											
REQUESTED MOTION: Approve Budget Resolution to transfer FY 2020 budgets among accounts and to adjust the budgets of certain revenue, other sources and expenditure accounts.											
MEETING DATE: 11/18/2020											
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:								
☐ PRESENTATIONS	☒ STATUTE §166.241	Anne K. Wright, CPA, CGFO Finance Director									
☒ CONSENT	☐ ORDINANCE										
☐ PUBLIC HEARING	☐ ADMIN. CODE										
☐ MAYOR AND COUNCIL MEMBER ITEMS	☒ OTHER- CITY CHARTER										
☐ MAYOR AND COUNCIL MEMBER'S REPORTS											
☐ CITY ATTORNEY ITEMS											
☐ CITY MANAGER ITEMS											
BACKGROUND: As outlined in section 46(a) of the City Charter, if revenues in excess of those budgeted are available for appropriation, the City Council may make supplemental appropriations for the year in an amount not to exceed such excess revenues or carry over revenues into the next fiscal year. Section 46(d), allows the transfer of all or part of any unrestricted appropriations from one department to another. Florida Statutes §166.241 allows a municipality to amend a budget within 60 days following the fiscal year end. Attached is a Budget Transfer Resolution to increase/decrease the budgets for certain revenue, other sources and expenditure accounts, and to transfer funding among expenditure accounts to fund certain accounts requiring additional budget, with an effective date retroactive to September 30, 2020. Attachment: Budget Resolution											
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? #7 Government Transparency											
STAFF RECOMMENDATIONS: Approve Budget Resolution											
REVIEWED BY: <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">City Manager:</td> <td><u>Arleen Huner</u></td> </tr> <tr> <td>City Attorney:</td> <td><u>Derek Rooney</u></td> </tr> <tr> <td>City Clerk:</td> <td><u>Debra Filipek</u></td> </tr> <tr> <td>Department Director:</td> <td><u>Anne Wright</u></td> </tr> </table>				City Manager:	<u>Arleen Huner</u>	City Attorney:	<u>Derek Rooney</u>	City Clerk:	<u>Debra Filipek</u>	Department Director:	<u>Anne Wright</u>
City Manager:	<u>Arleen Huner</u>										
City Attorney:	<u>Derek Rooney</u>										
City Clerk:	<u>Debra Filipek</u>										
Department Director:	<u>Anne Wright</u>										
COUNCIL ACTION: ☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER											

**CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 20 –**

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; APPROVING A 2020 FISCAL YEAR BUDGET AMENDMENT TO ADJUST THE BUDGET FOR REVENUE, OTHER SOURCES AND EXPENDITURES AND TO TRANSFER BUDGET AMONG ACCOUNTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 19, 2019, the City of Bonita Springs adopted the budget for the fiscal year ending September 30, 2020; and

WHEREAS, Florida Statutes, 166.241 allows a municipality to amend a budget within 60 days following the fiscal year end, and

WHEREAS, the City Charter, Section 46 allows for supplemental appropriations for the year in an amount not to exceed such excess revenues.

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

1.The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon its adoption.

2.The Bonita Springs' City Council authorizes the following budget amendment and tranfers to increase (decrease) budgeted amounts for the indicated accounts within the indicated funds:

Account	Account Description	Budget Increase(Decrease)	
		Rev./Other Sources	Expend/ Other Uses
GRANT FUND			
13.707.3315000	CDBG Revenue	46,280	
13.707.581.0030	CDBG -Transfer out to Capital Projects		46,280
CAPITAL PROJECTS FUND			
30.250.541.6323	W. Terry St Pathway		46,280
30.999.3810013	Transfer in from Grants Fund	46,280	
30.250.541.6908	Logan Blvd (Gas Tax funded)		6,985
30.250.541.6308	Asphalt Overlays (Gas Tax funded)		(6,985)
30.250.538.6810	Quinn/Downs/Dean west of Imperial Pkwy (General Fund funded)		36
30.270.519.4909	Contingeny (General Fund funded)		(36)
31.602.572.6000	Recreation Ctr Improvemts (General Fund funded)		1
31.604.572.6000	Pool Landscaping (General Fund funded)		(1)
GENERAL FUND			
00.000.3160000	Local Business Tax	(861)	
00.000.3290000	Permits	(2,500)	
00.211.3290005	Environmental Services	(185)	
00.230.3290000	Rental Permits	(8,400)	
00.230.3290003	Registration Fee	(1,790)	
00.250.3290000	Public Works Permits	(4,524)	
00.430.3290000	Special Events Permits/Sponsorships	(1,350)	
00.000.3351400	Mobile Home License Tax	(2,584)	
00.000.3351800	Half Cent Sales Tax	(131,766)	
00.250.3354901	FL DOT-US41 Light Miantenance	(2,000)	
00.000.3472000	Park & Recreation Revenue	(37,361)	
00.000.3472001	Pool Revenue	(6,814)	
00.211.3419000	Planning & Zoning Fees	(16,741)	
00.211.3419001	Hurricane Mitigation	(29,440)	
00.211.3490000	Other Charges for Services	(4,459)	
00.430.3474000	Special Events Revenues	(2,824)	
00.501.3413000	Administrative Services Fees	(40,267)	
00.000.3515000	Judgments, Fines - Traffic	(3,185)	
00.000.3611000	Interest	(8,946)	
00.000.3620000	Rents & Royalties	(7,169)	
00.211.3690002	Restricted Bldg Code Surcharge	(2,235)	
00.999.3810019	Transfer in from Building Fees Fund	(15,000)	
00.000.3110000	Ad Valorem Taxes	30,324	
00.000.3150000	Local Communications Services Tax	93,766	

Account	Account Description	Budget Increase(Decrease)	
		Rev./Other Sources	Expend/ Other Uses
GENERAL FUND			
00.000.3231000	Franchise Fees - Electricity	64,731	
00.000.3351200	Revenue Sharing	19,841	
00.000.3351500	Alcoholic Beverage License Tax	24,418	
00.211.3437000	Conservation & Resource Mgmt	21,500	
00.230.3540000	Code Enf Fines Local Ordinance	63,476	
00.000.3699000	Other Misc Revenues	12,345	
00.000.3351500	Alcoholic Beverage License Tax	1,917	
00.270.513.3109	State Alcoholic Dev Service Charge		1,917
00.883.360000	Contributions – Veterans Fund	64	
00.883.572.5200	Veteran's Bricks		64
00.211.515.4908	Credit Card Fees		15,380
00.270.592.4926	COVID 19 Related Expenses		15,000
00.250.541.3419	Exotic Vegetation Removal		(30,380)

3.This Resolution shall become effective retroactive to September 30, 2020 upon adoption by the Bonita Springs City Council.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 18th day of November, 2020.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Carr	Purdon
Corrie	Quaremba
Forbes	Steinmeyer
Gibson	

Date filed with City Clerk: _____

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	20-11-348
AGENDA ITEM SUMMARY		
REQUESTED MOTION: Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates, Inc. for stormwater design of Spring Creek/Bonita Springs Golf Course Flood Improvement Project		
MEETING DATE: 11/18/2020		
AGENDA:	REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Matt Feeney Assistant City Manager Elly Soto McKuen Senior Project Manager
☒ CONSENT	☐ ORDINANCE	
☐ PUBLIC HEARING	☐ ADMIN. CODE	
☐ MAYOR AND COUNCIL MEMBER ITEMS	☒ OTHER	
☐ MAYOR AND COUNCIL MEMBER'S REPORTS		
☐ CITY ATTORNEY ITEMS		
☐ CITY MANAGER ITEMS		
BACKGROUND:		
Staff issued a Request for Qualifications (RFQ 20-03) on April 2, 2020 for design, a Hydrologic and Hydraulic Study and construction plans for the Spring Creek Bonita Springs Golf Course Flood Improvement Project. The City received seven (7) proposals on June 2, 2020. The Selection Committee met on July 10, 2020 and evaluated the submitted proposals and on July 16, 2020, the Selection Committee recommended Singhofen & Associates as the top ranked firm. City Council unanimously approved the Selection Committees recommendation on August 5, 2020. Attachment: Sub-recipient Agreement		
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? 1) Stormwater Management, 3) Strengthen/Enhance City Finances, 4) Environmental Protection, 5) Community Aesthetics		
STAFF RECOMMENDATIONS: Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates for stormwater design of Spring Creek/Bonita Springs Golf Course Flood Improvement Project		
REVIEWED BY:		
City Manager:	<u>Arleen Hunter</u>	
City Attorney:	<u>Derek Rooney</u>	
City Clerk:	<u>Debra Filipek</u>	
Department Director:	<u>Matt Feeney</u>	
COUNCIL ACTION:		
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER		

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 20__, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Singhofen & Associates, Incorporated (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Spring Creek/Bonita Springs Golf Course Flood Improvement Phase 1 – RFQ# 20-03, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES

Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

1.01 COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The consultant will comply with all applicable Federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 2.00-DEFINITIONS

The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY

The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT

The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES

The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT

The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not

be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR

The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT

The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES

The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES

The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER

The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION

The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER

The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER

The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

2.15 FEDERALLY ASSISTANT CONSTRUCTION CONTRACT

Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee or any application of modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

2.16 CONSTRUCTION WORK

The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

- 1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

- 2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty (40) percent. If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty (20) percent. If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten (10) percent of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict

with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

- a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s) encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written

consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE

For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with

the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of \$10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

- a) Keep and maintain public records required by the City and/or any funding agency to perform the service.
- b) Upon request from the City's custodian of public records, provide the City and/or any funding agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes §119 or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Consultant does not transfer the records to the City.
- d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.
- f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.
- g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262,**

**CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS,
FL 34135, debbie.filipek@cityofbonitasprings.org.**

- h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Singhofen & Associates, Incorporated

11723 Orpington Street, Suite 100

Orlando, FL 32817

Telephone Number: (407) 679-3001

Fax Number: (407) 679-2691

ATTENTION: Robert Gaylord, P.E.
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act

or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

ARTICLE 26.00-EQUAL EMPLOYMENT OPPORTUNITY

The Consultant hereby agrees that it will incorporate or cause to be incorporated into this contract 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:

26.01 The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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, sexual orientation, gender identity, 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 consultant 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.

26.02 The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

26.03 The consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

26.04 The consultant 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 consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

26.05 The consultant 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.

26.06 The consultant 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.

26.07 In the event of the consultant'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 consultant 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.

26.08 The consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 subcontractant or vendor. The consultant 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 consultant becomes involved in, or is threatened with, litigation with a subcontractant or vendor as a result of such direction by the administering agency, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

The consultant 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.

The consultant 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.

The consultant 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 consultant 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 applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

ARTICLE 27.00 COPELAND "ANTI-KICKBACK" ACT

The consultant shall comply with 18 USC § 874, 40 USC § 3145 and the requirements of 29 USC Part 3 as maybe applicable, which are incorporated by reference into this contract.

27.01 SUBCONTRACTS

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

27.02 BREACH

A breach of the contract clauses above may be grounds for termination of the contract and for debarment as a consultant and subconsultant as provided in 29 CFR § 5.12.

[This space intentionally left blank]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

Austin J. Reynolds
(Witness)
[Signature]
(Witness)

CORPORATE SEAL

CONSULTANT

BY: _____
(Authorized Signature)
President
(Title)

DATE: *11/11/20*



EXHIBIT A

Scope of Professional Services Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

Date: November 10, 2020

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

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

Sub-Task 1 – Data Collection, Catalog and Field Review

The objective of this task is to gather pertinent data related to the project from the CITY, other applicable agencies, and local communities. The data collected shall be reviewed to determine the significance of the information relative to defining the project design, hydrologic/hydraulic characteristics, wetlands, and surface water quantity within the project area. The information to be reviewed includes existing model data, available reports, as-built plans, permits, etc. for the extent of the project. Available relevant environmental data including soils, land use, wetlands, hydrography, etc. will also be collected. The CONSULTANT will use the available 2017 Digital Elevation Model (DEM) for stormwater data outside the project construction limits and the new topographic survey for onsite stormwater data. The CONSULTANT will blend or mesh the existing DEM and topographic survey to create new DEM for the project.

This task includes site reconnaissance efforts. The CONSULTANT shall conduct site reconnaissance by key design team members to observe current site conditions and to inspect areas of special concern with respect to necessary design requirements. One site visit is included in this scope of services.

Sub-Task 2 – Existing Conditions Model Development and Analysis

This task involves the development of a stormwater model of the existing conditions to include hydrologic and hydraulic parameters such as: sub-basin delineation, existing land uses, soils, reach definition, and storage. The model will be used to estimate existing flows and flood stages and to identify and quantify existing flood problems.

Sub-Task 2.A. – Hydrologic Database Mapping

The CONSULTANT will prepare a base map featuring model boundaries, major roadway systems, aerial photography, GIS grade topography, and other pertinent features as applicable for the proposed study area.

The CONSULTANT will prepare a nodal network map. This will serve as the basis for the hydrologic parameter take-offs and for the final model network.

The CONSULTANT will focus on the primary drainage system and will not model driveway culvert / swale systems.

The CONSULTANT will prepare hydrologic features map data layers including:

- **Impervious & Pervious:** Existing conditions will be based on the GIS Mapping supplemented with the most recent aerial photographic maps as well as field observations at the initiation of this study.
- **Soils:** Based on the Natural Resources Conservation Service (NRCS) mapping for City, USDA Web Soil Survey, and/or field observation and analysis.
- **Watershed and Sub Basin Delineation:** Based on the most recent topographic survey maps and the nodal network above.

The CONSULTANT will use ICPR4 to develop an existing conditions model that encompasses the project area. No groundwater modeling is included in this scope of services. Sea level rise will be considered in establishing tailwater conditions for the modeling of the stormwater system. The CONSULTANT will determine the rates and volumes of stormwater runoff for appropriate storm events. The CONSULTANT shall:

- provide modeling scenarios for existing conditions (the Existing Conditions Model) and for the proposed conditions (the Design Models).

The CONSULTANT will determine the extents, magnitude of flooding, and other existing information necessary to prepare a Benefit Cost Analysis (BCA) for the 25- and 100-year storm event(s) for throughout the study area. The CONSULTANT will prepare a written description for each problem area that describes the causes and extents of the problem(s).

Prior to continuing, the CONSULTANT will coordinate an online web-based meeting with the CITY Project Manager to review the existing conditions model results.

Sub-Task 3 – Design Conditions Model Development and Analysis

This task includes the development of up to three (3) conceptual design alternatives that incorporate the objectives listed above. The proposed designs shall identify land acquisition and/or easement requirements, preliminary construction costs, construction constraints, wetland and conservation area impacts, and permit requirements. Design flood stages and flow rates will be evaluated and compared to the existing conditions results and a comparison table will be included in the Summary Memorandum as discussed below. The FEMA BCA (toolkit 6) will be prepared for each design alternative.

The CONSULTANT will focus on the primary drainage system and determine access points into the system (connection points for secondary drainage systems). The CONSULTANT will not model or design driveway culverts, swales, or secondary drainage systems.

Prior to continuing, the CONSULTANT will coordinate an online web-based meeting with the CITY Project Manager to review the conceptual designs and design conditions model results.

The CONSULTANT will assist the CITY with conducting a public information meeting to discuss the proposed solutions with affected property owners and residents prior to finalization of the general design. The CONSULTANT will prepare and provide exhibits for the meeting and attend the meeting to gather public input. After the meeting, the CONSULTANT will review, categorize, and summarize any written public comments and/or notes made at the meeting and identify any concerns to be addressed by the study. The CONSULTANT anticipates one (1) public meeting.\

Sub-Task 4 – Design Summary Memorandum

The CONSULTANT shall prepare a brief draft technical engineering memorandum to document the analysis of the existing stormwater management systems, summarize the recommended improvements, define land acquisition requirements, identify permitting requirements, provide estimates of the costs for construction, detail the results of the computer modeling, and quantify the benefits derived from the solution concepts and provide a recommendation based on the objectives discussed above.

The Design Memo will be provided to the CITY for review and comment. Upon receiving the CITY comments, the CONSULTANT will review and, if necessary, request clarification via email or web-based meeting prior to proceeding with Construction Documents (Phase 1B), which will be conducted under a separate scope of services.

Sub-Task 5 – Final Deliverables

Upon completion of the work, the CONSULTANT will deliver the following:

- One hardcopy of the Final Design Summary Memorandum
- One electronic copy (PDF) of the Final Design Summary Memorandum
- An electronic deliverable with pertinent GIS files and ICPR4 Models
- FEMA Benefit Cost Analysis documentation for each of the 3 alternatives in a format acceptable to the City and Florida Department of Emergency Management
- Photographs from field reconnaissance efforts will be included in the Summary Memorandum
- Electronic copy (PDF) of the conceptual drawings and comparison tables
- Conceptual construction cost for each design alternative
- Electronic copy (PDF) of working design maps for discussion
- Electronic copy (PDF) of the Exhibit Boards for review and for public meetings
- Summary memorandum of meeting and potential design changes

EXHIBIT B

Compensation and Method of Payment Spring Creek/Bonita Springs Golf Course Flood Improvement Project Phase 1

Date: November 10, 2020

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

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

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
Sub-Task 1	Data Collection, Catalog and Field Review	\$ 5,920	LS	N/A
Sub-Task 2	Existing Conditions Model Development and Analysis	\$ 39,560	LS	N/A
Sub-Task 3	Design Conditions Model Development and Analysis	\$ 52,154	LS	N/A
Sub-Task 4	Design Summary Memorandum	\$ 9,237	LS	N/A
Sub-Task 5	Final Deliverables	\$ 1,072	LS	N/A
	Project Management and Out of Pocket Expenses	\$ 1,938	NTE	N/A
TOTAL		\$109,881		

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Spring Creek/Bonita Springs Golf Course Flood Improvement Phase 1

Consultant's Personnel Hourly Rate Schedule*

Date: November 10, 2020

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT: Singhofen & Associates, Incorporated

(A separate page should be included for each sub-consultant.)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate	(3) Multiplier***	(4) Hourly Rate To Be Charged (Column 2x3)
Not Applicable			

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

***NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs and profit.

EXHIBIT C

Time and Schedule of Performance Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

Date: November 10, 2020

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed
Sub-Task 1	Data Collection, Catalog and Field Review	15	15
Sub-Task 2	Existing Conditions Model Development and Analysis	45	60
Sub-Task 3	Design Conditions Model Development and Analysis	60	120
Sub-Task 4	Design Summary Memorandum	45	165
Sub-Task 5	Final Deliverables	15	180

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

Date: November 10, 2020

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

Date: November 10, 2020

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

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

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1

Date: November 10, 2020

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1.

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.
3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Simsbury & Assoc. Inc
BY: Robert Gaylord
TITLE: PRESIDENT

The foregoing instrument was signed and acknowledged before me this 11th day of November, 2020
by Robert B. Gaylord who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

Robin G. Broadhurst
Notary Public Signature

HH033620 9/24/2024
Notary Commission Number/Expiration

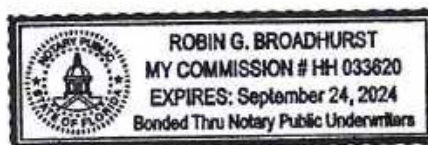


EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ The policy shall be endorsed to provide a waiver of subrogation in favor of the City. NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	\$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ \$1,000,000 per occurrence, \$1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ \$ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft \$ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. STATUTORY ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) Full insurable value of the scope of the work ☐ Pollution \$ _____ Per Occurrence ☒ Professional Liability \$1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess \$ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than Two Million Dollars (\$2,000,000) and aggregate limits of Six Million Dollars (\$6,000,000) to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your <u>General Liability</u> policy coverage to be \$5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements <u>and other requirements such as payment for and scheduling Railroad Inspector / Flagman</u> , please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than \$200,000, a performance bond will be required. For projects in excess of \$200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. <u>Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.</u>

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion

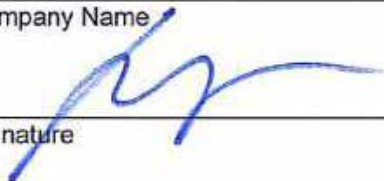
Vendor Covered Transactions

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

VENDOR

Singhofen & Associates, Inc.
Company Name

783377690
DUNS Number


Signature

11/11/20
Date

Robert B. Gaylord, PE, President
Print Name and Title

11723 Orpington Street, Suite 100
Street Address

Orlando, Florida 32817
City, State, Zip

For City of Bonita Springs use only

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

Company: [] is debarred [] is not debarred

Verified by: _____
Name

Date: _____

EXHIBIT I

Scrutinized Companies Statement

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

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number RFQ #20-03, for Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1.
 2. This sworn statement is submitted by Singhofen & Associates, Inc. whose business
[Name of entity submitting sworn statement]
address is 11723 Orpington Street, Suite 100, Orlando, Florida 32817 and (if
applicable) its Federal Employer Identification Number (FEIN) is 592341111 (If the entity has no
FEIN include the Social Security Number of the individual signing this sworn statement: _____).
 3. My name is Robert B. Gaylord and my relationship to the above is
[Please print name of individual signing]
President
 4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.
 5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.
 6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.
 7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.
 8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. [Please indicate which statements apply]. [MARK WHICH SECTION THE VENDOR SHOULD BE ANSWERING]
- ☒ **Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)**
☒ The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
☐ The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.
- ☒ **Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for \$1 Million or more)**
☒ The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
☐ The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.
- ☒ **Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for \$1 Million or more)**
☒ The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
☐ The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
- ☒ **Business Operations in Cuba or Syria (bid, proposal or contract renewal for \$1 Million or more)**
☒ The entity submitting this sworn statement does not have business operations in Cuba or Syria.
☐ The entity submitting this sworn statement does have business operations in Cuba or Syria.

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

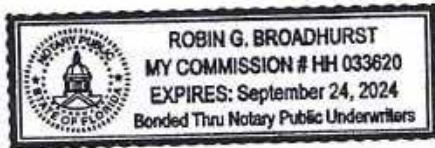
By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

[Signature] Robert B. Gaylord
AFFIANT _____
Typed Name of AFFIANT _____
President _____
Title _____

STATE OF Florida COUNTY OF Orange

The foregoing instrument was executed before me this 11th day of November, 2020,
by Robert B. Gaylord as President of
Singhofen & Associates, Inc., who personally ~~swore or affirmed that he/she~~ is authorized to
execute this document and thereby bind the Corporation, and who is personally known to me OR has
produced _____ as identification.

(stamp)



[Signature]
NOTARY PUBLIC, State of Florida

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

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

Scrutinized Companies that Boycott Israel List:

[☒] entity is **NOT** on list [☐] entity is on list

Scrutinized Companies with Activities in Sudan List:

[☒] entity is **NOT** on list [☐] entity is on list

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

[☒] entity is **NOT** on list [☐] entity is on list

Business Operations in Cuba or Syria:

[☒] entity is **NOT** on list [☐] entity is on list

Verified by: _____

Print Name

Date: _____

EXHIBIT J
Certification Regarding Lobbying
44 CFR Part 18, Appendix A
Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the RFQ#20-04, Logan Boulevard Regional Floodway Drainage, Phase 1.

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 cooperating agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

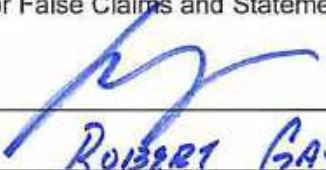
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to 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.

The consultant/contractor, Singhofen Associates Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the consultant/contractor understands and agrees that the provisions of 31 USC Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Consultant/Contractor Authorized Official _____

Name and Title of Consultant/Contractor Authorized Official _____

Date 11/11/20


ROBERT GAYLORD, PE
PRESIDENT

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-347
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates, Inc. for stormwater design of Logan Boulevard Regional Floodway Drainage Project			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Matt Feeney Assistant City Manager Elly Soto McKuen Senior Project Manager	
☒ CONSENT	☐ ORDINANCE		
☐ PUBLIC HEARING	☐ ADMIN. CODE		
☐ MAYOR AND COUNCIL MEMBER ITEMS	☒ OTHER		
☐ MAYOR AND COUNCIL MEMBER'S REPORTS			
☐ CITY ATTORNEY ITEMS			
☐ CITY MANAGER ITEMS			
BACKGROUND:			
Staff issued a Request for Qualifications (RFQ 20-04) on March 11, 2020 for design, a Hydrologic and Hydraulic Study and construction plans for the Logan Boulevard Regional Floodway Drainage Project. The submittal deadline was extended from April 30, 2020 to June 2, 2020. The City received seven (7) proposals on June 2, 2020. The Selection Committee met on July 13, 2020 and evaluated the submitted proposals and on July 29, 2020, the Selection Committee recommended Singhofen & Associates as the top ranked firm. City Council unanimously approved the Selection Committee's recommendation on September 2, 2020. Attachment: Sub-recipient Agreement			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? 1) Stormwater Management, 3) Strengthen/Enhance City Finances, 4) Environmental Protection, 5) Community Aesthetics			
STAFF RECOMMENDATIONS: Approve a sub-recipient agreement between the City of Bonita Springs and Singhofen & Associates, Inc. for stormwater design of Logan Boulevard Regional Floodway Drainage Project			
REVIEWED BY:			
City Manager:	<u>Arleen Hunter</u>		
City Attorney:	<u>Derek Rooney</u>		
City Clerk:	<u>Debra Filipek</u>		
Department Director:	<u>Matt Feeney</u>		
COUNCIL ACTION:			
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 20____, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Singhofen & Associates, Incorporated (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Logan Boulevard Regional Floodway Drainage Phase 1 – RFQ# 20-04, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES

Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

1.01 COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The consultant will comply with all applicable Federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 2.00-DEFINITIONS

The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY

The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT

The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES

The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT

The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not

be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR

The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT

The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES

The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES

The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER

The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate, and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION

The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER

The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER

The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

2.15 FEDERALLY ASSISTANT CONSTRUCTION CONTRACT

Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee or any application of modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

2.16 CONSTRUCTION WORK

The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s), and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

- 1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

- 2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty (40) percent. If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty (20) percent. If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten (10) percent of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict

with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

- a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying, or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s) encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work

being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE

For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City

that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of \$10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices, and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

- a) Keep and maintain public records required by the City and/or any funding agency to perform the service.
- b) Upon request from the City's custodian of public records, provide the City and/or any funding agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes §119 or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Consultant does not transfer the records to the City.
- d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.
- f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.
- g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262,**

**CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS,
FL 34135, debbie.filipek@cityofbonitasprings.org.**

- h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Singhofen & Associates, Incorporated

11723 Orpington Street, Suite 100

Orlando, FL 32817

Telephone Number: (407) 679-3001

Fax Number: (407) 679-2691

ATTENTION: Robert Gaylord, P.E.
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant and will follow the manner for termination as outlined in 2 CFR Park 200, Appendix II(B).

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act

or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

ARTICLE 26.00-EQUAL EMPLOYMENT OPPORTUNITY

The Consultant hereby agrees that it will incorporate or cause to be incorporated into this contract 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:

26.01 The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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, sexual orientation, gender identity, 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 consultant 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.

26.02 The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

26.03 The consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

26.04 The consultant 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 consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

26.05 The consultant 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.

26.06 The consultant 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.

26.07 In the event of the consultant'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 consultant 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.

26.08 The consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 subcontract or vendor. The consultant 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 consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

The consultant 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.

The consultant 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.

The consultant 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 consultant 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 applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

ARTICLE 27.00 COPELAND "ANTI-KICKBACK" ACT

The consultant shall comply with 18 USC § 874, 40 USC § 3145 and the requirements of 29 USC Part 3 as maybe applicable, which are incorporated by reference into this contract.

27.01 SUBCONTRACTS

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

27.02 BREACH

A breach of the contract clauses above may be grounds for termination of the contract and for debarment as a consultant and subconsultant as provided in 29 CFR § 5.12.

(This space intentionally left blank)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

Caroline Reynolds
(Witness)
[Signature]
(Witness)

CORPORATE SEAL

CONSULTANT

BY: [Signature]
(Authorized Signature)
President
(Title)

DATE: 11/11/20

EXHIBIT A

Scope of Professional Services Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

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

Sub-Task 1 – Data Collection, Catalog and Field Review

The objective of this task is to gather pertinent data related to the project from the CITY, other applicable agencies, and local communities. The data collected shall be reviewed to determine the significance of the information relative to defining the project design, hydrologic/hydraulic characteristics, wetlands, and surface water quantity within the project area. The information to be reviewed includes existing model data, available reports, as-built plans, permits, etc. for the extent of the project. Available relevant environmental data including soils, land use, wetlands, hydrography, etc. will also be collected. The CONSULTANT will use the available 2017 Digital Elevation Model (DEM) for stormwater data outside the project construction limits and the new topographic survey for onsite stormwater data. The CONSULTANT will blend or mesh the existing DEM and topographic survey to create new DEM for the project.

This task includes site reconnaissance efforts. The CONSULTANT shall conduct site reconnaissance by key design team members to observe current site conditions and to inspect areas of special concern with respect to necessary design requirements. One site visit is included in this scope of services.

Sub-Task 2 – Right-of-Way, Topographic, Utility and Structure Survey

The CONSULTANT will utilize recently completed construction plans created in 2018 by Banks Engineering, Inc. for base map information. No survey is anticipated however, final survey determinations will be made as the plans progress.

Sub-Task 3 – Existing Conditions Model Development and Analysis

This task involves the development of a stormwater model of the existing conditions to include hydrologic and hydraulic parameters such as: sub-basin delineation, existing land uses, soils, reach definition and storage. The model will be used to estimate existing flows and flood stages and to identify and quantify existing flood problems.

Sub-Task 3A – Hydrologic Database Mapping

The CONSULTANT will prepare a base map featuring model boundaries, major roadway systems, aerial photography, GIS grade topography, and other pertinent features as applicable for the proposed study area.

The CONSULTANT will prepare a nodal network map. This will serve as the basis for the hydrologic parameter take-offs and for the final model network.

The CONSULTANT will focus on the primary drainage system and will not model driveway culvert / swale systems.

The CONSULTANT will prepare hydrologic features map data layers including:

- **Impervious & Pervious:** Existing conditions will be based on the GIS Mapping supplemented with the most recent aerial photographic maps as well as field observations at the initiation of this study.
- **Soils:** Based on the Natural Resources Conservation Service (NRCS) mapping for City, USDA Web Soil Survey, and/or field observation and analysis.
- **Watershed and Sub Basin Delineation:** Based on the most recent topographic survey maps and the nodal network above.

The CONSULTANT will use ICPR4 to develop an existing conditions model that encompasses the project area. No groundwater modeling is included in this scope of services. Sea level rise will be considered in establishing tailwater conditions for the modeling of the stormwater system. The CONSULTANT will determine the rates and volumes of stormwater runoff for appropriate storm events. The CONSULTANT shall:

- provide modeling scenarios for existing conditions (the Existing Conditions Model) and for the proposed conditions (the Design Models).

The CONSULTANT will determine the extents, magnitude of flooding, and other existing information necessary to prepare a Benefit Cost Analysis (BCA) for the 25- and 100-year storm event(s) for throughout the study area. The CONSULTANT will prepare a written description for each problem area that describes the causes and extents of the problem(s).

Prior to continuing, the CONSULTANT will coordinate an online web-based meeting with the CITY Project Manager to review the existing conditions model results.

Sub-Task 4 – Design Conditions Model Development and Analysis

This task includes the development of up to two (2) conceptual design alternatives that incorporate the objectives listed above. The proposed designs shall identify land acquisition and/or easement requirements, preliminary construction costs, construction constraints, wetland and conservation area impacts, and permit requirements. Design flood stages and flow rates will be evaluated and compared to the existing conditions results and a comparison table will be included in the Summary Memorandum as discussed below. The FEMA BCA (toolkit 6) will be prepared for each design alternative.

The CONSULTANT will focus on the primary drainage system and determine access points into the system (connection points for secondary drainage systems). The CONSULTANT will not model or design driveway culverts, swales, or secondary drainage systems.

Prior to continuing, the CONSULTANT will coordinate an online web-based meeting with the CITY Project Manager to review the conceptual designs and design conditions model results.

The CONSULTANT will assist the CITY with conducting a public information meeting to discuss the proposed solutions with affected property owners and residents prior to finalization of the general design. The CONSULTANT will prepare and provide exhibits for the meeting and attend the meeting to gather public input. After the meeting, the CONSULTANT will review, categorize, and summarize any written public comments and/or notes made at the meeting and identify any concerns to be addressed by the study. The CONSULTANT anticipates one (1) public meeting.

Sub-Task 5 – Brief Technical Memorandum

The CONSULTANT shall prepare a brief draft technical memorandum that will summarize the recommended improvements, identify permitting requirements, provide estimates of the costs for construction, comparison tables or maps of the computer modeling and quantify the benefits derived from the solution concepts and provide a recommendation based on the objectives identified in previous sub-tasks.

Sub-Task 6 – Final Construction Documents

The CONSULTANT will proceed with final construction documents upon receipt of the CITY's notice to proceed. Plans will be submitted at the 60%, 90%, and 100% design phases. The construction plans are anticipated to consist of the following sheets:

Sheet Number	Sheet Title/Description
1	Cover Sheet
2	General Notes
3	Summary of Quantities/Pay Item Notes
4	Typical Sections and Details
5	Project Layout Plan
6	Special Details – Bonita Beach Road and Bonita Grande Drive
7	Special Details – Bonita Beach Road and Logan Boulevard
8	Special Details – Pump Platform
9	Special Details – Pump Discharge Sump
10	Stormwater Pollution Prevention Plan Notes and Details
11	SWPPP Plan Layout
12	Traffic Control Plan
V1-V6	Survey (Banks' As Builts)

Utility Identification and Notification: The CONSULTANT will notify respective utility owners of the project and associated work at the 60% construction plan submittals. The CONSULTANT will incorporate or modify the existing utilities based on the utility owners' markups. The planning of relocation efforts, identification of required relocation times, and phasing are not included in this scope of services.

90% Plans: Upon completion of the CITY's 60% review the CONSULTANT will revise and submit 90% construction plans to the CITY for review.

100% Plans: Upon completion of the CITY's 90% review the CONSULTANT will revise and submit 100% construction plans to the CITY for review.

Preparation of Provisions and Supplemental Conditions: The CONSULTANT will prepare Supplemental Specifications, Special and Technical Provisions as necessary to direct the work. Modifications to Division I of the FDOT Standard Specifications for Road and Bridge Construction are not included.

Cost Estimates: The CONSULTANT will furnish detailed construction quantities and cost estimates at each submittal phase. The cost estimate will include final design services, construction, and materials. No quantity computation booklet is anticipated but an Excel spreadsheet that tabulates the quantities will be provided.

Sub-Task 7 – Environmental and Permit Services

The CONSULTANT shall prepare and submit applications for permits necessary to construct the project and will respond to any RAI's from the permitting agencies. Fees for permits shall be paid by the CITY. The agencies requiring permits include SFWMD Environmental Resource Permit, USACE General Permit, and Tribal Consultation. Permit applications other than those specified above are not included in this Scope of Services. The NPDES (Construction) Permit shall be the responsibility of the Contractor.

Environmental Resource Permit (ERP)

Pre-Application Meeting: A pre-application web-based meeting will be held with SFWMD to present the design and discuss the permit requirements. The CONSULTANT will summarize the meeting and provide meeting minutes to the CITY.

Permit Application Preparation: The CONSULTANT shall prepare and submit permit packages to the SFWMD. The CONSULTANT will monitor the permit throughout the approval process and will respond to requests for additional information (RAIs). The permit application shall be submitted upon completion of the 60% plan set.

USACE Permit

Permit Application Preparation: The CONSULTANT shall prepare and submit a permit package to the USACE. The CONSULTANT will monitor the permit throughout the approval process and will respond to requests for additional information. The permit application shall be submitted upon completion of the 60% plan set.

Tribal Consultation Package

Information Package: The CONSULTANT shall prepare and provide the following information to the City.

- 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.
- Previous and current use of proposed project area
- Any known site work or historic uses for the proposed location
- Any available studies that may have taken place on the property (City will assist in searching for studies).

Other Permits

The NPDES (Construction) Permit shall be the responsibility of the Contractor. No other permits are included in this Scope of Services.

Sub-Task 8 – Final Deliverables

Upon satisfactory completion of the work, the CONSULTANT will deliver the following:

- One hardcopy of the Brief Technical Memorandum
- One electronic copy (PDF) of the Brief Technical Memorandum
- One electronic (PDF) of the construction plans
- One electronic (PDF) signed & sealed set of construction plans
- One (1) set of signed and sealed final construction plans at full scale (22" x 34")
- Three (3) sets of unsigned construction plans at full scale (22" x 34")
- One electronic copy of the construction plans in AutoCAD® format
- An electronic deliverable with pertinent GIS files and ICPR4 Models will be provided
- FEMA Benefit Cost Analysis documentation for each of the 3 alternatives in a format acceptable to the City and Florida Department of Emergency Management

EXHIBIT B

Compensation and Method of Payment Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

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

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
Sub-Task 1	Data Collection, Catalog and Field Review	\$ 3,424	LS	N/A
Sub-Task 2	Right-of-Way, Topographic, Utility and Structure Survey	\$20,000	NTE	N/A
Sub-Task 3	Existing Conditions Model Development and Analysis	\$37,444	LS	N/A
Sub-Task 4	Design Conditions Model Development and Analysis	\$38,118	LS	N/A
Sub-Task 5	Brief Technical Memorandum	\$ 3,895	LS	N/A
Sub-Task 6	Final Construction Documents	\$35,198	LS	N/A
Sub-Task 7	Environmental and Permit Services	\$ 7,062	LS	N/A
Sub-Task 8	Final Deliverables	\$ 1,966	LS	N/A
	Project Management and Out of Pocket Expenses	\$ 5,056	NTE	N/A
TOTAL		\$152,163		

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Logan Boulevard Regional Floodway Drainage, Phase 1

Consultant's Personnel Hourly Rate Schedule*

Date: November 10, 2020

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT: Singhofen & Associated, Incorporated

(A separate page should be included for each sub-consultant.)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate	(3) Multiplier***	(4) Hourly Rate To Be Charged (Column 2x3)
Not Applicable			

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

***NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs and profit.

EXHIBIT C

Time and Schedule of Performance Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed
Sub-Task 1	Data Collection, Catalog and Field Review	30	15
Sub-Task 2	Right-of-Way, Topographic, Utility and Structure Survey	As needed	
Sub-Task 3	Existing Conditions Model Development and Analysis	45	60
Sub-Task 4	Design Conditions Model Development and Analysis	60	120
Sub-Task 5	Brief Technical Memorandum	30	150
Sub-Task 6	Final Construction Documents	130	280
Sub-Task 7	Environmental and Permit Services	90	370
Sub-Task 8	Final Deliverables	14	384

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
Environmental Survey	Banks Engineering, Inc. 10511 Six Mile Cypress Parkway Fort Myers, FL 33966	Yes

EXHIBIT E

Project Guidelines and Criteria
Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

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

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the RFQ#20-04, Logan Boulevard Regional Floodway Drainage, Phase 1.

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.
3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Singhosen & Assoc. Inc.
BY: Robert Gaylord
TITLE: President

The foregoing instrument was signed and acknowledged before me this 11th day of November, 2020

by Robert B. Gaylord who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

Robin G. Broadhurst
Notary Public Signature

HH033620 9/24/2024
Notary Commission Number/Expiration

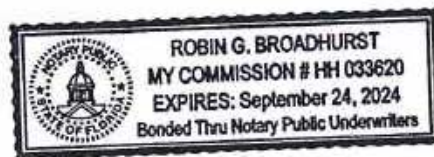


EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ The policy shall be endorsed to provide a waiver of subrogation in favor of the City. NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	\$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ \$1,000,000 per occurrence, \$1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ \$ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft \$ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. STATUTORY ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) Full insurable value of the scope of the work ☐ Pollution \$ _____ Per Occurrence ☒ Professional Liability \$1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess \$ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than Two Million Dollars (\$2,000,000) and aggregate limits of Six Million Dollars (\$6,000,000) to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your <u>General Liability policy coverage to be \$5,000,000</u> . They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements <u>and other requirements such as payment for and scheduling Railroad Inspector / Flagman</u> , please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than \$200,000, a performance bond will be required. For projects in excess of \$200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. <u>Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.</u>

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

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

VENDOR

Singhofen & Associates, Inc.
Company Name

783377690
DUNS Number


Signature

11/11/20
Date

Robert B. Gaylord, PE, President
Print Name and Title

11723 Orpington Street, Suite 100
Street Address

Orlando, Florida 32817
City, State, Zip

For City of Bonita Springs use only

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

Company: ☐ is debarred ☐ is not debarred

Verified by: _____
Name

Date: _____

EXHIBIT I

Scrutinized Companies Statement

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

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number RFQ #20-03, for Spring Creek/Bonita Springs Golf Course Flood Improvement Project, Phase 1.
 2. This sworn statement is submitted by Singhofen & Associates, Inc. whose business
[Name of entity submitting sworn statement]
address is 11723 Orpington Street, Suite 100, Orlando, Florida 32817 and (if applicable) its Federal Employer Identification Number (FEIN) is 592341111 (If the entity has no FEIN include the Social Security Number of the individual signing this sworn statement: _____).
 3. My name is Robert B. Gaylord and my relationship to the above is
[Please print name of individual signing]
President
 4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.
 5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.
 6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.
 7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.
 8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. [Please indicate which statements apply]. [MARK WHICH SECTION THE VENDOR SHOULD BE ANSWERING]
- [X] Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)**
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.
- [X] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for \$1 Million or more)**
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.
- [X] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for \$1 Million or more)**
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
- [X] Business Operations in Cuba or Syria (bid, proposal or contract renewal for \$1 Million or more)**
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[] The entity submitting this sworn statement does have business operations in Cuba or Syria.

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

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

[Signature]
AFFIANT

Robert B. Gaylord
Typed Name of AFFIANT

President
Title

STATE OF Florida COUNTY OF Orange

The foregoing instrument was executed before me this 11th day of November, 2020.

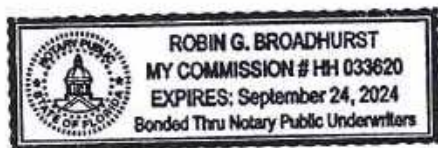
by Robert B. Gaylord as President of

Singhofen & Associates, Inc., who personally ~~swore or affirmed~~ that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

[Signature]
NOTARY PUBLIC, State of Florida

(stamp)



THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

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

Scrutinized Companies that Boycott Israel List:

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

Scrutinized Companies with Activities in Sudan List:

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

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

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

Business Operations in Cuba or Syria:

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

Verified by:

Print Name

Rupert Gaylen

Date:

11/11/20

EXHIBIT J
Certification Regarding Lobbying
44 CFR Part 18, Appendix A
Logan Boulevard Regional Floodway Drainage, Phase 1

Date: November 10, 2020

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the RFQ#20-04, Logan Boulevard Regional Floodway Drainage, Phase 1.

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 cooperating agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

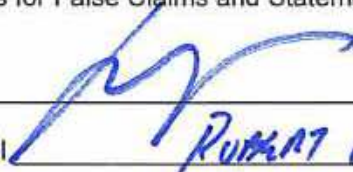
The consultant/contractor, Singhosen Associates Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the consultant/contractor understands and agrees that the provisions of 31 USC Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Consultant/Contractor Authorized Official _____

Name and Title of Consultant/Contractor Authorized Official _____

Date _____

11/11/20


Robert Gaylord
President

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-354
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Update by Capitol Strategies on the 2021 Legislative Session and discussion of the City's Legislative Priorities.			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☒	PRESENTATIONS	☐	Arleen M. Hunter City Manager
☐	CONSENT	☐	
☐	PUBLIC HEARING	☐	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☐	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS		
☐	CITY ATTORNEY ITEMS		
☐	CITY MANAGER ITEMS		
BACKGROUND:			
Lobbyists Carole Green and Ashley Stacell will be present at Wednesday's meeting to provide Council with an update on the upcoming legislative session. Attached are the 2020 Legislative Priorities for Council's information for a future discussion by City Council. Attachments: 2020 Legislative Priorities Short List of Legislative Funding Projects 2020			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? 1) Improve Storm Water Management, 3) Strengthen City Finances			
STAFF RECOMMENDATIONS: Receive presentation and provide staff any desired direction.			
REVIEWED BY:			
City Manager:		<u>Arleen Hunter</u>	
City Attorney:		<u>Derek Rooney</u>	
City Clerk:		<u>Debra Filipek</u>	
Department Director:		_____	
COUNCIL ACTION:			
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			



2020 City of Bonita Springs Legislative Priorities

- 1. The City of Bonita Springs supports funding for flooding reduction/mitigation projects within its municipal boundaries.**
- 2. The City of Bonita Springs supports State sustainability initiatives, especially those which would prevent discharges from Lake Okeechobee and which promote clean fresh and salt water bodies. The City also opposes any water quality proposals which would negatively impact our City.**
- 3. The City of Bonita Springs supports flooding reduction mitigation projects within our municipality and improvements to water quality.**
- 4. The City of Bonita Springs supports State funding for projects which would advance enhanced transportation connectivity for pedestrian and bicyclists as well as design and construction of additional "complete" streets.**
- 5. The City of Bonita Springs believes in affordable insurance rates for our citizens. Towards that end, the City opposes any action or legislation, at any governmental level, that will have the effect of significantly increasing flood insurance rates.**
- 6. The City of Bonita Springs supports efforts to provide State funding for local acquisition of preservation lands in the Density Reduction Groundwater Resource (DR/GR) areas of the City.**
- 7. The City of Bonita Springs opposes any effort to allow fracking in and around the Southwest Florida area.**
- 8. The City of Bonita Springs supports legislation that would allow pari-mutuel facilities within counties that have passed referendums to provide slot gaming.**

More GENERALLY, the City of Bonita Springs supports increased state funding for education (private, public and charter schools) and supports State sustainability initiatives including possible alternative sources of power and opposes any legislation that would pre-empt Home Rule protection.

CITY OF BONITA SPRINGS, FLORIDA
PROPOSED SHORT LIST OF LEGISLATIVE FUNDING PROJECTS – 2020

1. **Imperial Bonita Estates, Quinn, Downs, and Dean Street west of Imperial Parkway Drainage Improvement Project:** Drainage improvement project to reduce and eliminate the effects of riverine flooding to the neighborhoods along Imperial Parkway and Bonita Beach Road that experienced severe flooding from Hurricane Irma. Phase I of the project: Modeling & Conceptual Design was initiated in 2018 by the City with an investment of \$141,440 to conduct engineering studies to model and develop drainage project concepts for this area. This request is for the detailed engineering required to develop the projects identified in the forthcoming studies into design & construction plans. The overall infrastructure improvements are estimated to cost \$7.5 million total. This legislative request is for Phase II: Detailed Plan & Design Development is for \$750,000 (which amounts to 10% of the estimated \$7.5 million in cost for the planned infrastructure improvements).
2. **Septic tank conversion to sanitary sewer;** The City of Bonita Springs will coordinate with Bonita Springs Utilities on septic tank conversion projects as funding opportunities become available that meet water quality improvement standards, (costs to be determined on a project basis).

Lee County Legislative Delegation

Founded 1886



CITY OF FORT MYERS	1885
CITY OF CAPE CORAL	1970
CITY OF SANIBEL	1974
TOWN OF FORT MYERS BEACH	1995
CITY OF BONITA SPRINGS	1999
VILLAGE OF ESTERO	2015



SENATOR BEN ALBRITTON
SENATOR KATHLEEN PASSIDOMO
SENATOR RAY RODRIGUES

REPRESENTATIVE SPENCER ROACH	CHAIR
REPRESENTATIVE JENNA PERSONS	VICE
REPRESENTATIVE MIKE GIALLOMBARDO	CHAIR
REPRESENTATIVE ADAM BOTANA	

MEMORANDUM

TO: All Agencies of Local Government, Interested Parties and SW Florida Media
FROM: Representative Spencer Roach, Chairman, Lee County Legislative Delegation
SUBJECT: Lee County Legislative Delegation Meeting and Public Hearing
DATE: November 12, 2020
Cc: Members, Lee County Legislative Delegation

The Lee County Legislative Delegation Meeting has been set for Wednesday, December 16th, 2020 in the Nursing Building (Room AA-177) at Florida Southwestern State College. The meeting is scheduled to begin at 9:00am until 5:00pm, or upon completion of the agenda and public comment. The Delegation will conduct local business including a public hearing on local bills (if filed), funding requests and other issues for which people may have registered to speak.

The deadline for submitting local bills to the Delegation is 5:00pm on Monday, December 7th, 2020. All local bills must be accompanied by completed paperwork required by the Florida Legislature, including original signatures of the legislative sponsors, and should be forwarded to Representative Roach at 3436 Marintown Lane STE 6, North Fort Myers, FL 33903.

Requests for placement on the meeting agenda must be submitted in writing to State Representative Spencer Roach, Chairman, Lee County Legislative Delegation, 3436 Marintown Lane STE 6, North Fort Myers, FL 33903, no later than Monday, December 7th, 2020 at 5:00pm. Requests made by electronic mail will be acknowledged within two (2) days of receiving the request.

Presenters who wish to provide supporting materials to the Delegation must **submit by electronic mail** by 5:00pm on Monday, December 7th, 2020. Each set of materials will then be printed on letter-size paper, three-hole punched at the left margin, and included in binders for each delegation member. These materials will also be available for the public on the delegation website (www.leedelegation.com).

The deadline to register to make a general presentation (not related to local bills) to the Delegation is also 5:00pm on Monday, December 7th, 2020. All requests for time on the agenda must be submitted in writing via email to brandon.miller@myfloridahouse.gov. The agenda for the meeting will be set by Friday, December 11th, 2020 and will be changed only to accommodate unforeseen emergencies.

For more information, please contact Brandon Miller, Legislative Assistant to Representative Roach, at Brandon.Miller@myfloridahouse.gov. All meetings of the Lee County Legislative Delegation are open to the public.

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-352
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Receive update by Waldrop Engineering, agent for DeFoor Allison Trust for Bonita Preservation Trust (property owner of the Shangri-La), for their master planning efforts as identified in the compliance agreement between the property owner and the City of Bonita Springs.			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☒ PRESENTATIONS	☐ STATUTE	John Dulmer, AICP, Community Development Director	
☐ CONSENT	☐ ORDINANCE		
☐ PUBLIC HEARING	☐ ADMIN. CODE		
☐ MAYOR AND COUNCIL MEMBER ITEMS	☐ OTHER:		
☐ MAYOR AND COUNCIL MEMBER'S REPORTS			
☐ CITY ATTORNEY ITEMS			
☐ CITY MANAGER ITEMS			
BACKGROUND: In April 2018, the property owner had entered into a compliance agreement with the City of Bonita Springs which required the property owner engage in master planning efforts for their land holdings on the west side of Industrial Street. The agreement requires them to present a current status update by December 2020 and the to present the current status of the plan to City Council at a public meeting, and to have the master plan approved/accepted by December 2021.			
Attachment: Compliance Agreement			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? 8, Economic Development, Downtown Revitalization			
STAFF RECOMMENDATIONS: Receive update.			
REVIEWED BY: City Manager: City Attorney: City Clerk: Department Director: <u>Arleen Hunter</u> <u>Derek Rooney</u> <u>Debra Filipek</u> _____			
COUNCIL ACTION: ☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			

THIS INSTRUMENT PREPARED BY:
Henderson, Franklin, Starnes & Holt, P.A.
c/o Charles J. Basinait
1715 Monroe Street
Fort Myers, Florida 33901
239-344-1100

STRAP # 35-47-25-B4-00207.0150, 35-47-25-B4-00207.0090 , 35-47-25-B4-00208.0260, 35-47-25B4-00210.003A, 35-47-25-B4-00210.0040, 35-47-25-B4-00210.0010 and 35-47-25-B4-00210.0030

AMENDED COMPLIANCE AGREEMENT
BONITA PRESERVATION TRUST

THIS COMPLIANCE AGREEMENT made this 11th day of APRIL, 2018, by and between the City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, Florida 34135 ("City"), and Bonita Preservation Trust, P.O. Box 366787, Bonita Springs, Florida 34136 ("Owner") (collectively, "Parties").

RECITALS

WHEREAS, Section 2-2 of the City's Land Development Code ("City's LDC"), entitled "compliance agreements," delegates the authority to the City Manager or designee to enter into compliance agreements to facilitate compliance with the terms and conditions of the City's LDC; and

WHEREAS, the purpose of a compliance agreement is to provide an alternative means to reach compliance with the terms of the City's LDC; and

WHEREAS, Bonita Preservation Trust (Allison DeFoor as trustee) is the owner of record for the real property and improvements located at 27771, 27791, and 27841-847 Industrial Street, Bonita Springs, Florida 34135 ("Eastern Property") and 27756, 27786, 27750 and 27754 Industrial Street, Bonita Springs, Florida 34135 ("Western Property"); and

WHEREAS, the Owner desires to modify the terms of that Compliance Agreement entered into on December 29, 2017 (attached as Exhibit "A") between the City of Bonita Springs and Bonita Preservation Trust due to the fact that MasTec North America, Inc. decided, after execution of said Compliance Agreement between Owner and City, not to enter into a lease with Owner for use of the Eastern Property; and

WHEREAS, there are certain obligations which arise by virtue of that Compliance Agreement, the disposition of which will be addressed in this Amended Compliance Agreement; and

WHEREAS, Owner is recognized as a partner and anchor in the downtown area, and the subject property has a substantial impact on the redevelopment of the Old 41 Redevelopment Overlay District ("Overlay"); and

WHEREAS, Owner desires to use both the Western and Eastern Property for uses that are consistent with the Overlay or for uses that are similar to those allowed in the Overlay; and

WHEREAS, the proposed uses are a soccer school, a woodworking business, a home occupation and a brewery; and

WHEREAS, the Eastern Property is located within the Overlay while the Western Property is currently located outside the Overlay; and

WHEREAS, the Eastern Property is included in Sub-Area 11 of the Overlay and is designated as Commercial and Industrial Flex Space in the Overlay; and

WHEREAS, a brewery is an allowed use in the Overlay; and

WHEREAS, the Western Property has a combination of both C-1 and IL zoning districts pursuant to the official zoning maps of the City of Bonita Springs; and

WHEREAS, Owner desires to locate woodworking, home occupation and soccer schools within the Western Property; and

WHEREAS, woodworking, home occupation and a soccer school are not specifically listed as uses permitted in the C-1 zoning district; and

WHEREAS, the City's LDC authorizes the City to approve a use not specifically listed as permitted if the proposed use has similar traffic, patronage, intensity, and characteristics of the uses otherwise permitted; and

WHEREAS, the City's LDC authorizes the director to determine uses that are not specifically listed in the use activity groups or in any of the use regulation tables that are permitted by right or by special exception in a particular zoning district based upon the placement of similar listed uses in the various districts, and

WHEREAS, Owner agrees to immediately commence preparation of a master plan for the Western Property, which master plan shall be in compliance with the Overlay. This master plan will include the following items in concept: uses with approximate square footage, building locations, parking, pedestrian and bicycle access; and

WHEREAS, Owner agrees to present the current status of the plan to City Council at a public meeting in December, 2020 and to have the plan accepted and/or adopted by the City by December, 2021; and

WHEREAS, City and Owner agree that the conditions delineated in the original Compliance Agreement relating to the removal and installation of fencing, irrigation and landscaping are no longer a requirement of this Amended Compliance Agreement; and

WHEREAS, the Owner for itself, its successors and assigns, has the legal authority to bind all ownership interest in the Property.

NOW THEREFORE, in consideration of the forgoing, the mutual promises and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Owner stipulates and agrees as follows in order for the Owner to obtain a Certificate of Occupancy and to occupy the Western and Eastern Property with uses as outlined above during the time required to add the Western Property into the Overlay. Any occupation or use of the Western Property from and after inclusion of the Western Property into the Overlay must be consistent with the Overlay. In addition, any occupation or use of the Eastern Property must be consistent with the Overlay from and after execution of this Amended Compliance Agreement:

1. The above Recitals are true and correct and the substantive provisions and terms are incorporated herein.
2. This Amended Compliance Agreement may be recorded in the Official Land Records of Lee County, Florida.
3. The Owner must maintain the Property such that it is in compliance with all the requirements of the City's LDC.
4. The Owner agrees to immediately commence preparation of a master plan for the Western Property. Thereafter, Owner agrees to schedule and attend a meeting with City Council during December, 2020 to discuss the status of the master plan and to have the master plan accepted and/or adopted by December, 2021. The Owner agrees that master planning of the Property will be consistent with the Overlay.
5. Owner agrees to include the Western Property into the master plan being developed. The Western Property is identified via strap numbers 35-47-25-B4-00210.003A (27756 Industrial Street), 35-47-25-B4-00210.0040 (27786 Industrial Street), 35-47-25-B4-00210.0010 (27750 Industrial Street) and 35-47-25-B4-00210.0030 (27754 Industrial Street).
6. The Parties agree that the Western Property shall be made a part of the Old 41 Redevelopment Overlay District via an amendment to the City's comprehensive plan. In the event that this amendment only contemplates expansion of the Overlay boundary to include the properties delineated in paragraph 5 herein then City agrees to do a City initiated amendment to the comprehensive plan and Owner agrees not to object to said amendment. If, however, the Owner proposes changes to the Overlay, other than a modification of the external boundary to add in Owner's property on the west side of Industrial Street, then Owner agrees to file a

Private amendment request to the comprehensive plan in order to effectuate these changes. Owner agrees to pay for legal advertising costs and cost recovery deposit fees (per Ordinance 17-18 as may be amended from time to time) for this comprehensive plan amendment regardless of the party filing the application.

7. The Parties shall comply with all terms of this Compliance Agreement, within the stated time frames. In the event the Parties execute, but do not perform all obligations under this Agreement, the City may pursue all appropriate remedies, including revocation of the Certificate of Occupancy for any uses on the Western Property.
8. The obligations imposed and entitlements created pursuant to this Amended Compliance Agreement shall be binding upon and enforceable by and against the Parties, their personal representatives, heirs, successors, grantees, lessees, and assigns.
9. That Compliance Agreement attached hereto as Exhibit "A" is hereby declared null and void and shall be of no further force and effect.

(REMAINING SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Owner has executed this Compliance Agreement in order to provide a mechanism to obtain a Certificate of Occupancy for the delineated uses on the Western Property and intends to be bound as of the date written above.

James P. May Jr
Witness

Log L. Maymont
Witness

BY: Allison DeFoor

Allison DeFoor
Trustee
Bonita Preservation Trust

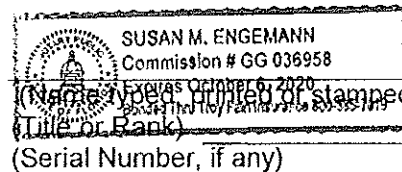
Date: 4-19-18

STATE OF FLORIDA
COUNTY OF ~~LEE~~ DUVAL

The foregoing instrument was acknowledged before me this 19th day of April, 2018 by Allison DeFoor, Trustee, Bonita Preservation Trust. He is personally known to me or has produced known to me as identification.

SEAL

Susan M. Engemann
Signature of Notary Public



Attest:

CITY OF BONITA SPRINGS

By: Charles Wade

Deputy
City Clerk

By: [Signature]

City Manager

Dated: 4/11/18

APPROVED AS TO LEGAL FORM:

By: [Signature]

City Attorney

EXHIBIT "A"

THIS INSTRUMENT PREPARED BY:
Henderson, Franklin, Starnes & Hoff, P.A.
c/o Charles J. Baskin
1715 Monroe Street
Fort Myers, Florida 33901
239-344-1100

STRAP # 35-47-25-B4-00207.0150, 35-47-25-B4-00207.0050 and 35-47-25-B4-00208.0250

COMPLIANCE AGREEMENT
BONITA PRESERVATION TRUST

THIS COMPLIANCE AGREEMENT made this 29th day of December, 2017, by and between the City of Bonita Springs, 8101 Bonita Beach Road, Bonita Springs, Florida 34135 ("City"), and Bonita Preservation Trust, P.O. Box 366787, Bonita Springs, Florida 34136 ("Owner") (collectively, "Parties").

RECITALS

WHEREAS, Section 2-2 of the City's Land Development Code ("City's LDC"), entitled "compliance agreements," delegates the authority to the City Manager or designee to enter into compliance agreements to facilitate compliance with the terms and conditions of the City's LDC; and

WHEREAS, the purpose of a compliance agreement is to provide an alternative means to reach compliance with the terms of the City's LDC; and

WHEREAS, Bonita Preservation Trust (Allison DeFoor as trustee) is the owner of record for the real property and improvements located at 27771, 27791, and 27841-847 Industrial Street, Bonita Springs, Florida 34135 ("Property"); and

WHEREAS, the Owner desires to lease a portion of the property to MasTec North America, Inc. ("MasTec"), for a period of five (5) years for the purpose of operating a business which includes limited office use, indoor storage, and outdoor storage; and

WHEREAS, the property owner is recognized as a partner and anchor in the downtown area, and the subject property has a substantial impact on the redevelopment of the Old U 41 Redevelopment Overlay; and

WHEREAS, the Property was zoned C-1, C-2, and IL pursuant to the official zoning maps of the City of Bonita Springs, Florida; and

WHEREAS, the proposed uses described above are considered to be Contractors and Builders, Group II uses, pursuant to the City's LDC and are permitted uses on lands zoned C-1, C-2, and IL; and

WHEREAS, the Property is located within the Old US 41 Corridor Redevelopment Overlay District ("Overlay District"); and

WHEREAS, the Property is included in Area 11 of the Overlay District and is designated as Commercial and Industrial Flex Space in the Overlay District; and

WHEREAS, Contractors and Builders, Group II uses, is not specifically listed as a use permitted in Area 11 of the Overlay District; and

WHEREAS, Section 4-869(2)(a) of the City's LDC authorizes the City to approve a use not specifically listed as permitted if the proposed use has similar traffic, patronage, intensity, and characteristics of the uses otherwise permitted; and

WHEREAS, the City and the Owner agree that the proposed uses by MasTec shall serve as a transitional use of the Property; and

WHEREAS, the Owner agrees that in beginning of the second year of the lease to MasTec the Owner shall commence preparation of a master plan for the Property, which master plan shall be in compliance with the Overlay District. This master plan will include the following items in concept; uses with approximate square footage, building locations, parking, pedestrian and bicycle access; and

WHEREAS, the Owner agrees to present the current status of the plan to City Council at a public meeting at the end of the third year of the lease and to have the plan accepted and/or adopted by the City by the end of the fourth year of the lease; and

WHEREAS, the Owner agrees that MasTec shall vacate the Property at the end of the five (5) year lease; and

WHEREAS, the Owner agrees that during the first six months of the lease, the Owner will make necessary changes to bring the Property into compliance with the requirements of the City's LDC; and

WHEREAS, the City agrees to authorize the use of the Property by MasTec for five (5) years from the commencement of the lease between the Owner and MasTec in exchange for which the Owner agrees to obtain a Certificate of Occupancy for the Property, make certain miscellaneous necessary site improvements to visually screen the storage of vehicles from adjacent properties and rights-of-way, which will include but not be limited to installation of an eight (8) foot tall opaque fence along the western, northern, and eastern sides of the Property adjacent to the large parking lot; and

WHEREAS, the Owner agrees to install vegetation consistent with a Type "D" buffer in planting boxes along the western side of the large parking lot adjacent to Industrial Street, except that all trees planted in connection with this requirement must be planted in the ground and not in planter boxes and all landscaping installed in connection with this requirement must be properly irrigated; and

WHEREAS, the Owner for itself, its successors and assigns, has the legal authority to bind all ownership interest in the Property.

NOW THEREFOR, in consideration of the foregoing, the mutual promises and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Owner stipulates and agrees as follows in order for the Owner to obtain a Certificate of Occupancy and to occupy the Property for five (5) years from the date of commencement of a lease between the Owner and MasTec:

1. The above Recitals are true and correct and the substantive provisions and terms are incorporated herein.
2. This Compliance Agreement may be recorded in the Official Land Records of Lee County, Florida.
3. The Owner must maintain the Property such that it is in compliance with all the requirements of the City's LDC.
4. As on-site mitigation, the Owner shall install an opaque fence eight (8) foot tall acceptable to the City architect along the western, northern, and eastern perimeter of the Property adjacent to the large parking lot. In addition, on the Industrial Street side of the fence, the Owner shall install landscaping consistent with a Type "D" buffer in planter boxes, except that all trees required herein shall be planted in the ground. An irrigation system shall be installed to adequately irrigate this landscaping. The Owner shall execute a contract for the installation of the fence and landscaping improvements within 60 days of commencement of the lease with MasTec. If additional screening is necessary, the City and Owner will work to find acceptable screening materials. Any improvements associated with ingress/egress will require development order approval. Any work to improve Industrial Street will require a right of way permit from the City's Public Works Department.
5. The vegetative buffer must be reasonably maintained throughout the term of the lease between the Owner and MasTec. Any plants that do not survive must be replaced within thirty (30) days of receipt of notice from the City. Failure to continue maintenance will be considered a breach of this Compliance Agreement.
6. If it is determined via City inspection that the aforementioned landscaping is not being maintained to City standards, and if the landscaping maintenance has still not been brought up to City standards within 30 days after Owner receives notice of same from the City, then this shall be considered a violation of this agreement and Owner shall face a fine of \$200.00 per day until and unless this violation is abated and subject to Condition 15 of this Agreement.

7. Owner agrees that any trucks located on the subject property will be parked a minimum of fifty (50) feet east of the opaque fence along the west side of the property.
8. The Owner agrees to commence preparation of a master plan for the Property at the beginning of the second year of the lease with MasTec. Thereafter, Owner further agrees to schedule and attend a meeting with City Council at the end of the third year of the lease to discuss the status of the master plan and to have the master plan accepted and/or adopted by the end of the fourth year of the lease between the Owner and MasTec. The Owner agrees that master planning of the Property will be consistent with the Overlay District.
9. Owner agrees to include four (4) other properties under their ownership and control in the master plan being developed pursuant to paragraph 8 herein. The four (4) other properties are identified via strap numbers 35-47-25-B4-00210.003A (27756 Industrial Street), 35-47-25-B4-00210.0040 (27786 Industrial Street), 35-47-25-B4-00210.0010 (27750 Industrial Street) and 35-47-25-B4-00210.0030 (27754 Industrial Street).
10. The Parties agree that the properties owned by Owner on the west side of Industrial Street and delineated in paragraph 9 herein shall be made a part of the Overlay via an amendment to the City's comprehensive plan. In the event that this amendment only contemplates expansion of the Overlay boundary to include the properties delineated in paragraph 9 herein then City agrees to do a City initiated amendment to the comprehensive plan and Owner agrees not to object to said amendment. If, however, the Owner proposes changes to the Overlay, other than a modification of the external boundary to add in Owner's property on the west side of Industrial Street, then Owner agrees to file a private amendment request to the comprehensive plan in order to effectuate these changes. Owner agrees to pay for legal advertising costs for this comprehensive plan amendment regardless of the party filing the application.
11. If MasTec fails to timely vacate the subject property on or before the end of their five (5) year lease then Owner shall face a fine of \$300.00 per day until MasTec vacates the property. If MasTec vacates the premises for any reason, whether on its own initiative or an eviction, Owner may not lease to any other tenant under this Compliance Agreement, except to the extent that the office building located at 27771 Industrial Street may be leased to a third party other than MasTec to be used as office space consistent with the Overlay.
12. Both parties agree that the master planning of the subject property is an integral part of this agreement. If the plan is not complete by the end of the 4th year of the lease with MasTec then the City has the option of revoking all occupancy permits and not issuing any new permits prior to the adoption of the master plan. The master plan will include improvements to

the right of way including vehicular and pedestrian access, parking, building locations, uses and square footage in conceptual form.

13. Owner agrees that MasTec will only use either Industrial Street and/or that portion of Old 41 between Tennessee Street and Bonita Beach Road for ingress and egress to the subject property, except that MasTec may use Old 41 north of Tennessee Street when MasTec has a job adjacent to the area of Old 41 north of Tennessee Street. In the event any MasTec truck utilizes Old 41 north of Tennessee Street for through traffic, the Owner will accept a code enforcement citation with a penalty in the amount of \$75.00 for the first violation, \$150.00 for the second violation and \$300.00 for the third and any additional violations.
14. Trucks are not allowed to idle on or in adjacent right of way for more than three minutes. Vehicles with back up beepers should only be engaged in reverse for the time necessary to park or place the vehicle in position to load.
15. The Parties shall comply with all terms of this Compliance Agreement, within the stated time frames. In the event the Parties execute, but do not perform all obligations under this Agreement, the City may pursue all appropriate remedies, including revocation of the Certificate of Occupancy for the Property.
16. The obligations imposed and entitlements created pursuant to this Compliance Agreement shall be binding upon and enforceable by and against the Parties, their personal representatives, heirs, successors, grantees, lessees, and assigns. The obligations, except for the master planning of the Property, may be assigned as provided herein to MasTec under the terms of the lease between the Owner and MasTec.
17. Vehicles cannot be staged in any public right of way.
18. To the extent possible, Owner and City have met with adjoining property owners and tenants as to the use of the subject property according to this Compliance Agreement. In the event that any adjoining property owners raise objections during the operation for the facilities under this Compliance Agreement, the Owner agrees to institute certain actions to address these concerns, this may include informal mediation to achieve the abatement of violations. This may also include an expedited code enforcement process to provide immediate attention to the dispute with resolution by the Code Enforcement Special Master to discuss the property owner's respective rights and responsibilities, mediate, and improve communication between the parties.

IN WITNESS WHEREOF, the Owner has executed this Compliance Agreement in order to provide a mechanism to obtain a Certificate of Occupancy for the Property to conduct a Contractor's and Builders, Group II use for five (5) years from the commencement date of a lease between the Owner and MasTec and intends to be bound as of the date written above.

Randall P. DeFoor
Witness

Randall P. DeFoor

[Signature]
Witness

BY: [Signature]

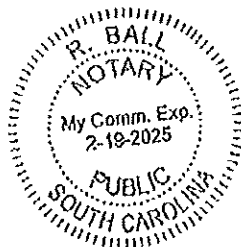
Allison DeFoor
Trustee
Bonita Preservation Trust

Date: 12/29/17

STATE OF ~~FLORIDA~~ South Carolina
COUNTY OF ~~LEE~~ Charleston

The foregoing instrument was acknowledged before me this 29th of December by Allison DeFoor, Trustee, Bonita Preservation Trust. He is personally known to me or has produced Driver's License as identification.

SEAL



[Signature]
Signature of Notary Public

Robert Ball
(Name typed, printed or stamped)
(Title or Rank)
(Serial Number, if any)

Attest:

By: [Signature]
City Clerk

CITY OF BONITA SPRINGS

By: [Signature]
City Manager

APPROVED AS TO LEGAL FORM:

By: [Signature]
City Attorney

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	20-11-346
AGENDA ITEM SUMMARY		
REQUESTED MOTION: Consistent with Resolution No. 10-057 creating the Administrative Code which establishes the Code of Conduct for its elected officials, confirmation of receipt of Code of Conduct.		
MEETING DATE: 11/18/2020		
AGENDA:	REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Derek Rooney City Attorney And Debra Filipek City Clerk
☐ CONSENT	☐ ORDINANCE	
☐ PUBLIC HEARING	☐ ADMIN. CODE	
☐ MAYOR AND COUNCIL MEMBER ITEMS	☐ OTHER	
☐ MAYOR AND COUNCIL MEMBER'S REPORTS		
☒ CITY ATTORNEY ITEMS		
☐ CITY MANAGER ITEMS		
BACKGROUND:		
While the City Charter provides information on the roles and responsibilities of Councilmembers, the Deputy Mayor and the Mayor, section 22 of the Charter specifies that City Council may set additional written standards of conduct for its members beyond those specified in this charter and may provide for such penalties as it deems appropriate, including forfeiture of office. This Administrative Code established the Code of Conduct, and is in addition to the following other rules that City Council must adhere to: ✓ The Florida Code of Ethics for Public Officers and Employees provides guidance on ethical issues to ensure that City Council conducts themselves independently and impartially, not using their office for private gain. ✓ Resolution 13-051, the most recent of the amended Administrative Code which serves as the rules of procedure for City Council meetings. ✓ Florida Sunshine Law and Public Records Law The Code of Conduct is designed to describe the manner in which Councilmembers should treat one another, city staff, constituents, and others with whom they come into contact with while representing the City of Bonita Springs. It reflects the work of the City Council with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The City Council also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly. The Code of Conduct also requires City Council members to confirm that they have received a copy for their review and use. A copy was given at adoption, and a new binder with a Charter, Code of Conduct and rules of procedure for City Council meetings was recently provided to each City Council member.		
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☐ YES ☒ NO IF YES, WHICH STRATEGIC OBJECTIVE?		
STAFF RECOMMENDATIONS: As a housekeeping item, individual City Council members should sign the next page and deliver to the City Clerk as the custodian of records.		
REVIEWED BY:		
City Manager:	<u>Arleen Hunter</u>	
City Attorney:	<u>Derek Rooney</u>	
City Clerk:	<u>Debra Filipek</u>	
Department Director:	_____	
COUNCIL ACTION:		
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER		

**CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 10-057**

**A RESOLUTION OF THE CITY OF BONITA SPRINGS,
FLORIDA; CREATING THE ADMINISTRATIVE CODE FOR
RULES OF CONDUCT FOR THE BONITA SPRINGS CITY
COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Bonita Springs City Council, as the duly elected governing body for the City of Bonita Springs; and

WHEREAS, the City Charter establishes that the Bonita Springs City Council shall determine its own rules and order of business, with section 22 specifying that City Council may set additional written standards of conduct for its members beyond those specified in this charter and may provide for such penalties as it deems appropriate, including forfeiture of office.

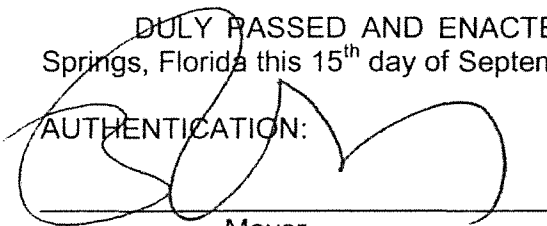
WHEREAS, City Council desires to create an Administrative Code to establish a Code of Conduct for its elected officials.

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

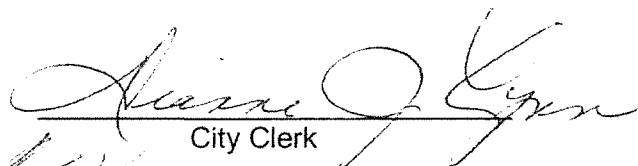
1. The City Council declares that the procedures set forth, attached hereto, and incorporated by reference herein by "Exhibit A", as amended, is applicable to Bonita Springs City Council.
2. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 15th day of September, 2010.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Nelson	Aye	Spear	Aye
McIntosh	Aye	Simons	Aye
Martin	Aye	Lonkart	Aye
Slachta	Aye		

Date Filed With City Clerk: 9-16-10

CITY OF BONITA SPRINGS CODE OF CONDUCT FOR ELECTED OFFICIALS

The Three Rs of Bonita Springs Government Leadership: Roles, Responsibilities and Respect

The City Charter provides information on the roles and responsibilities of Councilmembers, the Deputy Mayor and the Mayor. The Florida Code of Ethics for Public Officers and Employees provides guidance on ethical issues to ensure that City Council conducts themselves independently and impartially, not using their office for private gain. There is also an Administrative Code for conducting meetings, but until now, what has not been clearly written down is a Code of Conduct for Bonita Springs City Councilmembers.

The Code of Conduct is designed to describe the manner in which Councilmembers should treat one another, city staff, constituents, and others with whom they come into contact with while representing the City of Bonita Springs. It reflects the work of the City Council with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The City Council also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly.

The contents of this Code of Conduct includes:	Page
A. Overview of Roles and Responsibilities	2
B. Policies and Protocol Related to Conduct	4
C. Council Conduct with One Another	5
D. Council Conduct with City Staff	6
E. Council Conduct with the Public	8
F. Council Conduct with Other Public Agencies	9
G. Council Conduct with Advisory Boards	10
H. Council Conduct with the Media	11
I. Sanctions	12

The constant and consistent themes through all of the conduct guidelines are dignity and respect. Councilmembers experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Councilmembers to do the right thing in even the most difficult situations.

A. Overview of Roles and Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Bonita Springs City Charter, Ordinances and Administrative Code and in the Handbook for Municipal Elected Officials, published by the Florida League of Cities.

MAYOR (City Charter §18)

- Elected "at-large" for a four-year term
- Recognized as head of the City Government for all ceremonial purposes
- Preside over meetings of the City Council
- Has same speaking and voting rights as any other member
- Shall in no case have the power to veto
- Executes and authenticates legal instruments requiring signature
- Leads the Council into an effective, cohesive working team

DEPUTY MAYOR (City Charter §18 And 21)

- Elected by the City Council at the first meeting following a new election.
- Performs the duties of the Mayor if the Mayor is absent, unable to fulfill duties, ceases to be qualified or is removed from office.
- Relinquishes City Council seat when serving as Mayor, assuming the duties of Mayor, unless more than 180 days from next election (then a Special Election).

ALL COUNCILMEMBERS (City Charter §12)

All members of the City Council, including the Mayor and Deputy Mayor, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect.

All Councilmembers should:

- Fully participate in City Council meetings and other duly advertised public meetings while demonstrating dignity, respect, kindness, consideration, and courtesy to all.
- Prepare in advance of meetings and be familiar with issues on the agenda. Address clarifications prior to meeting with applicable staff.
- Be respectful of other people's time. Stay focused and act efficiently during Council meetings or other City related meetings.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Bonita Spring's government.
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Councilmember is otherwise not available.
- Demonstrate honesty and integrity in every action and statement.

- Follow Federal, State and Municipal Laws guiding public officials, including, but not limited to, Honest Services Act, State Ethics, Sunshine and Public Records Law, Administrative Code for City Council meetings, Communications Policy, etc.

B. Policies and Protocol Related to Conduct

1. Ceremonial Events – City Charter §18 designates the Mayor to serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if the event organizers would like another representative from the Council.

2. Correspondence Signatures - Councilmembers do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings (exception: zoning ex parte contact). City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff.

3. Endorsements of Candidates - Councilmembers have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

4. Intergovernmental Relations – Generally, City Charter §18 designates the Mayor to represent the City in intergovernmental relationships (the exception are designated liaisons). The Council values intergovernmental relations with neighboring communities and other entities. As a result, Councilmembers should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

5. Legislative Process - The City generally follows Roberts Rule of Order for meeting management. See the Administrative Code for City Council meetings.

6. Public Meeting Hearing Protocol - The Mayor will open the public meetings, following the Rules of Procedure for City Council meetings. The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Councilmembers should withhold comment during the public hearing portion of the meeting until the conclusion of the public's portion of the hearing. Councilmembers should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

7. Travel Expenses (City Charter §19, Bonita Springs Ordinance No. 00-12) - May receive reimbursement of actual expenses while performing their official duties. Councilmembers who travel on official City Business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and allowable miscellaneous expenses for the Councilmember only. (City Council are responsible for spouse or others travelling with the Council member). All travel expenses will be handled in the same manner and consistent with the provisions of state law and ordinances.

C. Council Conduct with One Another

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve, protect and enhance the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS –

1. Practice civility, professionalism and decorum in discussions and debate - Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Councilmembers to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Councilmembers should conduct themselves in a professional manner at all times, including physical appearance.

2. Honor the role of the Mayor in maintaining order - It is the responsibility of the Mayor to keep the comments of all persons, including but not limited to, the Councilmembers on track during public meetings. Councilmembers should honor efforts by the Mayor to focus discussions on current agenda items. If there is disagreement about the agenda or the Mayor's actions in refraining staff, public or Councilmembers from speaking, those objections should be voiced politely and with reason.

3. Avoid personal comments that could offend other Councilmembers - If a Councilmember is personally offended by the remarks of another Councilmember, the offended Councilmember should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Councilmember to justify or apologize for the language used. The Mayor will maintain order of this discussion.

4. Demonstrate effective problem-solving approaches -

Councilmembers have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

5. Be punctual and keep comments relative to topics discussed -

Councilmembers have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Councilmembers be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues. If a Councilmember has an item requested to be on the agenda, it is important they set the example by providing timely written materials.

IN PRIVATE ENCOUNTERS

1. Continue respectful behavior in private - The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

2. Be aware of the insecurity of written notes, voice and text messages, and e-mail - Technology allows words written or said without much forethought to be distributed wide and far. The Public Records Law mandates that any material made or received by an agency in connection with official business be used to perpetuate, communicate or formalize knowledge is a public record, and unless exempt, must be turned over to someone requesting to see that material. Before you create a document, ask yourself: Would you feel comfortable to have this note faxed or PDF'd to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this email message was forwarded to others? Written notes, voicemail messages and email related to City business are public communication subject to disclosure.

3. Even private conversations can have a public presence - Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

D. Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff members, who implement and administer the Council

policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

1. Treat all staff as professionals - Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

2. Limit contact to specific City staff - Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Councilmembers should ask the City Manager for direction. Materials supplied to a Councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

3. Do not disrupt City staff from their jobs – Staff wants to be accessible for City Council, but Councilmembers should avoid disrupting City staff while they are in meetings, on the phone, or engrossed in performing their job functions.

4. Never publicly criticize an individual employee - Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager.

5. Do not get involved in administrative functions - Councilmembers must not attempt to influence City Staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The City Charter, Section 20 also contains information about the prohibition of Council interference in administrative functions.

6. Check with City staff on correspondence before taking action - Before sending correspondence, Councilmembers should check with City staff to see if an official City response has already been sent or is in progress.

7. Do not attend staff meetings (with or without public) unless requested by staff or City Council - Even if the Councilmember does not say anything, the Councilmembers presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

8. Limit requests for staff support - Even in high priority or emergency situations, requests for additional staff support should be made to the City

Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government and following City Council direction.

9. Do not solicit political support from staff - Councilmembers should not solicit any type of political support (financial contributions, display of poster or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

E. Council Conduct with the Public

1. IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality prejudice or disrespect should be evident on the part of individual Councilmembers toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

a. Be welcoming to speakers and treat them with care and gentleness - Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.

b. Be fair and equitable in allocating public hearing time to individual speakers - The Mayor, in accordance with the Administrative Code for City Council meetings, will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated four minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers. No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public comment unless the Council requests additional clarification. After the close of any public comment portion, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

c. Give the appearance of active listening - It is disconcerting to speakers to have Councilmembers not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time, gazing around the room or getting up from your seat gives the appearance of disinterest. Be aware of facial expressions and body language (e.g., head and

arm movements), especially those that could be interpreted as "smirking", disbelief, anger or boredom.

d. Ask for clarification, but avoid debate and argument with the public - Only the Mayor – not individual Councilmembers – can interrupt a speaker during a presentation. However, a Councilmember can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Councilmember finds disturbing. If speakers become flustered or defensive, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Councilmembers to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker.

e. No personal attacks of any kind, under any circumstance!

f. Follow parliamentary procedure in conducting public meetings - The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

2. IN UNOFFICIAL SETTINGS

a. Make no promise on behalf of the Council - Councilmembers will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

b. Make no personal comments about other Councilmembers - It is acceptable to disagree publicly about an issue, but it is unacceptable to make derogatory comments about other Councilmembers, their opinions and actions.

c. Remember that despite its impressive size, Bonita Springs is a small community at heart – Councilmembers are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Bonita Springs. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Councilmembers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

F. Council Conduct with Other Public Agencies

a. Be clear about representing the City or personal interests - If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state:

- (i) if his or her statement reflects personal opinion or is the official stance of the City;
- (ii) whether this is the majority or minority opinion of the Council. Even if the Council member is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.
- (iii) If the Council member is representing the City, the Council member must support and advocate the official City position on an issue, not a personal viewpoint.
- (iv) If the Council member is representing another organization whose position is different from the City, the Council member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

b. Correspondence also should be equally clear about representation - City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record. To avoid confusion regarding City Council's position, it is best that City letterhead not be used for correspondence of Councilmembers representing a personal point of view, or a dissenting point of view from an official Council position.

G. Council Conduct with Advisory Boards

The City has established several advisory boards as a means of gathering more community input. Citizens who serve on advisory boards become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

a. If attending an advisory boards meeting, and you are not the liaison, be careful to only express personal opinions - Councilmembers may attend any advisory board meeting, which are always open to any member of the public. However, if the advisory board is conducting a public hearing, the Council member shall refrain from attending. Councilmembers should be sensitive to the way their participation could be viewed as unfairly affecting the process. Any

public comments by a Council member at an advisory board meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also be cognizant of the Sunshine Law, precluding discussion (outside of meeting advertised for City Council) by two or more members of City Council on any item that may take action upon. A council member's presence may affect the conduct of the advisory boards and limit their role and function.

b. **Limit contact with advisory boards members** - It is inappropriate, and at times illegal, for a Council member to contact an advisory board member to lobby on behalf of an individual, business, or developer. Councilmembers should contact staff in order to clarify a position taken by the advisory boards.

c. **Remember that advisory boards serve City Council, not individual Councilmembers** - City Council appoints individuals to serve on Advisory boards, and it is the responsibility of advisory boards to follow policy established by the Council. But advisory board members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten advisory board members with removal if they disagree about an issue. Appointment and re-appointment to an advisory boards should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. An advisory board's appointment should not be used as a political "reward".

d. **Be respectful of diverse opinions** - A primary role of advisory boards is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of any citizens serving on advisory boards.

e. **Keep election issues away from public forums and advisory board meetings** – Section 14 of the City Charter calls for nonpartisan elections. While Councilmembers are free to participate in politics when not conducting official business, they should refrain from campaigning for office or providing political support or non-support for those who are running for any elected office (national, state or local) while conducting official duties or when attending advisory meetings.

f. **Inappropriate behavior can lead to removal** - Inappropriate behavior by an advisory board member should be brought to the attention of City Council, and with the assistance of the City Attorney in preparing the greensheet, the individual may be subject to removal from the advisory board or if the advisory board is not operating in accordance with City Council's direction, dissolution of the advisory board.

H. Council Conduct with the Media

Councilmembers may be contacted by the media for background and quotes.

a. **The best advice for dealing with the media is to avoid going “off the record”** - Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

b. **Choose words carefully and cautiously** - Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

I. Sanctions

Councilmembers Behavior and Conduct (City Charter §22) - City Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of this Code of Conduct could lead to other sanctions as deemed appropriate by Council, including forfeiture of office. It is the responsibility of City Council to initiate action if a Council member's behavior may warrant sanction due to a breach of these written standards of conduct. Any action taken on the alleged violation(s) must be brought up with the City Council in a public meeting.

If the violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Councilmembers, the complaining party should bring to the attention to City Council, with City Council voting whether the City Manager, the City Attorney and/or outside investigator should investigate the allegation and report the findings to City Council. If necessary, City Council can under §23 of the City Charter subpoena witnesses, administer oaths and require the production of evidence, in order to make their decisions in accordance with §22 of the City Charter.

Upon adoption of this Code of Conduct, following election to office and once a year thereafter, each elected officer will confirm that they have received a copy of this Code of Conduct for their review and use.

Signature

Date

City of Bonita Springs, Florida
Resolution No. 10-57
Confirmation November 18, 2020

City of Bonita Springs Code of Conduct
For Elected Officials

Upon adoption of this Code of Conduct, following election to office and once a year thereafter, each elected officer will confirm that they have received a copy of this Code of Conduct for their review and use.

Signature

Date

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-350
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Consistent with the City Charter and the Code of Conduct for its elected officials, elect a Deputy Mayor			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Derek Rooney City Attorney	
☐ CONSENT	☐ ORDINANCE		
☐ PUBLIC HEARING	☐ ADMIN. CODE		
☐ MAYOR AND COUNCIL MEMBER ITEMS	☐ OTHER		
☐ MAYOR AND COUNCIL MEMBER'S REPORTS			
☒ CITY ATTORNEY ITEMS			
☐ CITY MANAGER ITEMS			
BACKGROUND:			
Section 22 of the Charter specifies that City Council may set additional written standards of conduct for its members beyond those specified in this charter. Charter sections 18 and 21, which discuss the position of Deputy Mayor, does not discuss any such requirement to hold an election at the first meeting following an election. To implement this Charter requirement, the Code of Conduct in the Overview of Roles & Responsibilities states that the Deputy Mayor is elected by the City Council at the first meeting following a new election. As to the function of Deputy Mayor, Charter §18 requires that: "... The Council shall elect, from among its members, a Deputy Mayor who shall act as Mayor during the absence or disability of the Mayor.			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☐ YES ☒ NO IF YES, WHICH STRATEGIC OBJECTIVE?			
STAFF RECOMMENDATIONS: City Council should elect, among themselves, a Deputy Mayor, who will hold this post until the next meeting following a City election.			
REVIEWED BY:			
City Manager: <u>Arleen Hunter</u> City Attorney: <u>Derek Rooney</u> City Clerk: <u>Debra Filipek</u> Department Director: _____			
COUNCIL ACTION:			
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	20-11-353
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Provide direction regarding the contents of the Letter of Interest for the sale and development of the Levin lot.			
MEETING DATE: 11/18/2020			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Derek Rooney City Attorney	
☐ CONSENT	☐ ORDINANCE		
☐ PUBLIC HEARING	☐ ADMIN. CODE		
☐ MAYOR AND COUNCIL MEMBER ITEMS	☒ OTHER		
☐ MAYOR AND COUNCIL MEMBER'S REPORTS			
☒ CITY ATTORNEY ITEMS			
☐ CITY MANAGER ITEMS			
BACKGROUND: On November 4, 2020, Council received a presentation from Chris and Jim Magnus of their proposal submitted in response to the City's Imperial Crossing solicitation. Pursuant to Council's direction, staff has worked with CBRE to negotiate with the Magnus team for the purpose of entering into a Letter of Intent ("LOI"). The purpose of the LOI is to outline the highlights of the proposed transaction. If approved, the LOI would serve as reference during the detailed negotiations to produce a formal contract for the proposed transaction. There are two outstanding issues in the attached LOI that the parties did not yet reach an agreement. The first attachment is a memo from CBRE explaining these issues and providing professional recommendations. Attachments: Memo from CBRE Draft Letter of Intent Executed Letter of Intent			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? Economic Development			
STAFF RECOMMENDATIONS: Provide direction regarding the Letter of Intent.			
REVIEWED BY: City Manager: <u>Arleen Hunter</u> City Attorney: <u>Derek Rooney</u> City Clerk: <u>Debra Filipek</u> Department Director: _____			
COUNCIL ACTION: ☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			



M E M O

CBRE, Inc.
527 Henley Drive
Naples, FL 34104-6532

+1 239-330-7665 Direct
+1 239-330-7699 Direct Fax
+1 203 326-0075 Cell
Jeffrey.gage@cbre.com
www.cbre.com/jeffrey.gage

Date: 11-18-2020
To: Bonita Springs City Council
Meeting 11-189-2020
From: Jeffrey H. Gage CCIM, SIOR, MRICS
Subject: Food Truck Park Letter of Intent –
CC: CBRE PIES team

Please reference attached redlined LOI Revised 11-6-2020

The terms of the LOI outline the intent of the parties for the development of a Food Truck Park based on the responses received by the Magnus/ May 14 and June 4, 2020 and presented to the City Council October 21, 2020. CBRE recommends that the City of Bonita Springs pursue the development of this Food Truck park subject to the terms of a pending Purchase and Sale Agreement "PSA".

There are two concepts under the Open Points section of the LOI, that have not been agreed to by the Buyer, but that CBRE recommends the parties negotiate as part of the PSA.

Section 3. a) The LOI states 10% of the \$425k is on deposit. If the conditions for the purchase are satisfied, and there is no closing, the Buyer should forfeit that money. b) If after the closing the Buyer does not complete the project within 2 years then the city must have remedies. Alt 1 The Buyer will issue a performance bond for the amount of the improvements. Alt 2 The city will have a performance lien on the property that stipulates if the improvements are not completed on time the Buyer forfeits title to the land.

Section 4. If the property transfers to another owner within 5 years after the completion of the development, the city gets 50% of the proceeds after the equity earns a 12% IRR. This may produce nothing, or something less than the \$75k offer by the Buyer, but it will prevent the implications of a windfall from a flip or a change in use.



Jeffrey H. Gage [CCIM](#), [SIOR](#), [MRICS](#)
Senior Vice President

CBRE, Inc.
Capital Markets

527 Henley Drive
Naples, FL 34104-6532

+1 239 330-7665 Direct
+1 203 326-0075 Cell

Jeffrey.gage@cbre.com
www.cbre.com/jeffrey.gage

October 26, 2020 **DRAFT**

Mr. Chris Magnus via email magnuscp@hotmail.com
Mr. Jim Magnus
c/o Bonita Storage Inn
8841 West Terry Street
Bonita Springs, FL 34135

RE: Letter of Intent for Purchase
27333 Old 41 Road
Bonita Springs, FL 34135

Dear Chris:

CBRE has been authorized by the City of Bonita Springs ("Seller") to represent them in their effort to select a developer to purchase and improve the subject property. This Letter of Intent "LOI" shall set forth the terms and conditions that the Seller has authorized us to present to you.

It is understood that this LOI is not intended to be a legally binding agreement and that it is solely for facilitating negotiations between the parties. No legally binding agreement shall exist unless and until a formal and definitive Purchase and Sale Agreement "PSA" has been negotiated, drafted, and approved by the respective parties and their legal counsel and executed and delivered by such parties.

We look forward to completing these negotiations with you and to the completion of your proposed project.

Sincerely,



Mr. Chris Magnus
November 6, 2020
Page 2 of 9

cc: City of Bonita Springs

Offer to Purchase/LOI	11-03--2020
BUYER:	A single purpose entity to be formed. c/o Chris, Jim and Susie Magnus
ASSIGNMENT OF PURCHASE AND SALE AGREEMENT "PSA":	PSA may not be assigned by Buyer without Seller's prior written consent.
SELLER:	City of Bonita Springs 9101 Bonita Beach Road SE Bonita Springs, FL 34134
PROPERTY:	27333 Old 41 Road Bonita Springs, FL 34135, and all associated rights to future development.
PURCHASE PRICE:	\$425,000.00
PAYMENT TERMS:	10% cash deposit in escrow on signing of the purchase and sale agreement, with credit for previously paid amount of \$21,250.00. Balance in cash on closing.
FINANCING TERMS:	None This is an all cash transaction.
CLOSING DATE:	30 days after all conditions have been satisfied. Seller's desire is to close as soon as possible.

CONDITIONS:

1. Title Search. The Seller at its expense shall deliver the Property to the Buyer on the closing date free and clear of any leases, liens or other encumbrances.
2. Zoning compliance review against anticipated uses, to include a zoning verification letter, and any necessary special exceptions, modification or revocation of restrictive ordinances and issuance of site development plan and building permits.
3. The Buyer's ability to provide proof of funds needed to complete the entire development within the agreed to time frame pursuant to the Development Agreement defined below.
4. Sellers City Council Approval
5. Phase 1 and as required phase 2 environmental.
6. Execution of mutually acceptable Development Agreement between the parties.
7. Approval of use to include liquor sales.
~~<JHG does the Buyer already have a food/liquor license that it will use for this location?~~

OPEN POINTS:

During the negotiation of the PSA the parties will discuss and negotiate in good faith the following business points.

1. Any conditions requested by the Buyer that are not listed above and categorized as generally accepted terms and conditions for a project of similar scope.
2. A Development Agreement between the parties to include the plan of development, general timeframe for the overall project schedule and key benchmarks, and offsite parking areas ("Development Agreement"). It is important to both parties that this project starts and finishes in a timely manner.
3. The parties will agree that if all of the conditions and approvals required are not obtained within a maximum time period set forth in the PSA, then the Buyer and Seller will each have the right to terminate the PSA ~~and whereupon Buyer will receive a refund of all deposit Monies~~ ~~<JHG The intent of this provision was to limit the amount of time the Seller is committed to performance of the Buyer. If the PSA conditions have been satisfied there should be an outside date where the Buyer needs to perform or it forfeits control of the site.>~~ monies.
4. ~~<JHG Decision needed by the city. A promote position for distribution of profits over a threshold IRR for the equity~~

~~is very reasonable especially if there is a short term flip and the city is dealing with a new operator. The Development Agreement will also include provisions that the project will be operated as a food truck park for a minimum period of five (5) years; provided however, in the event the developer or owner of the food truck park desires to redevelop the site during such five (5) year period, such owner will be required to obtain City Council approval for the redevelopment of the site. This restriction shall expire five (5) years following the date of execution of the PSA. <JHG not sure this represents the intention of the city?>~~

4. A provision that facilitates Buyer to continue as operator by imposing a flat fee penalty equal to \$75,000.00 if a sale occurs within 5 years of the effective date of the PSA.

5. The project will include non-exclusive offsite parking located on Lemon Tree as further set forth in the RFP, which Buyer may improve and shall have the right to count such parking spaces to satisfy any parking requirements for the food truck park.

6. The City may also provide the Buyer access to additional offsite parking that is currently being utilized by Lee County, and if desired, Buyer may improve the same and utilize such parking on a non-

	exclusive basis for the food truck park. Neither the City nor the Buyer shall be obligated to provide, accept or improve this parking area. <JHG Neither party will "police" the use of the parking. It is truly non-exclusive>
DUE DILIGENCE:	The Buyer shall have a period of thirty (30) days following the execution of the PSA to conduct any due diligence related to the project and the land. If the Buyer determines that the land is not suitable for Buyer's project, in Buyer's sole and absolute discretion, Buyer shall have the right to terminate the PSA and receive a refund of all the deposits. During the course of negotiating the PSA, the Buyer will provide the Seller with a detailed list of all the diligence items to be supplied by the Seller. The Seller will use best efforts to supply these items to the Buyer at or prior to PSA signing. All diligence materials produced and paid for by the Buyer may be transferred to the Seller, at the Buyers actual cost, in the event a closing does not occur.
REQUESTED DILIGENCE:	Buyer would like to request the following information from the Seller, <u>without representation or warranty</u>: 1. Surveys. 2. Current zoning documentation. 3. Any environmental assessments and reports. 4. Appraisals. 5. Tax Information.



Mr. Chris Magnus
November 6, 2020
Page 7 of 9

	6. Any other documentation or information relating to the subject property in the Seller's possession or control. <JHG This is an accommodation, not an obligation to provide anything. Diligence is at Buyers expense.>
DOCUMENTS FOR REFERENCE	The documents listed below will be used to draft specific provisions in the PSA 1. Request for Proposal #20-02 issued by CBRE on behalf of the Seller dated 1-24-2020 2. Chris Magnus response submitted 5-14-2020 along with associated spreadsheets 3. Chris Magnus amendment email dated 6-4-2020 along with associated spreadsheets
MONEY AT RISK:	Any Deposit shall be at risk after all conditions of the purchase and sale agreement have been satisfied.
TARGET DATES AND TIMING:	Review draft PSA December 17, 2020 Start Due Diligence November 9, 2020 Sign PSA January 29, 2021 Complete Diligence February 26, 2021 Waive all conditions TBD Close on sale May 1, 2021



Mr. Chris Magnus
November 6, 2020
Page 8 of 9

CONFIDENTIALITY:	All negotiations are confidential and only those allied professionals with a "need to know" will understand the terms and status of our deal. If the press or the public makes any inquiry, we will decline comment until after the closing and the parties agree on the appropriate "press release". Notwithstanding, it is understood that unless statutorily exempt all communications, negotiations, and records relating to the sale are subject to Florida's public meeting and records laws.
NON-BINDING:	It is understood that this LOI is not intended to be a legally binding agreement and that it is solely for facilitating negotiations between the parties. No legally binding agreement shall exist unless and until a formal and definitive purchase and sale agreement has been negotiated, drafted, and approved by the respective parties and their legal counsel and executed and delivered by such parties.
BROKERAGE:	The Sellers broker is CBRE. The parties agree that Buyer is responsible for the payment of any commissions or fees due CBRE per the terms of the RFP and an agreement to be signed with the Buyer, up to a maximum amount of \$83,667.11. <JHG Strike this insertion. Fees are per the RFP and the agreement with the city and are not capped. We don't have final numbers on the cost of the project so the fee can not be calculated>



Mr. Chris Magnus
November 6, 2020
Page 9 of 9

BUYERS ATTORNEY:	Craig D. Grider, Esq. Coleman, Yovanovich & Koester, P.A. 4001 Tamiami Trail North, Suite 300 Naples, Florida 34103 T: 239-435-3535 F: 239-435-1218 Email: cgrider@cyklawfirm.com
SELLERS ATTORNEY:	Richard Swift Richard.Swift @gray-robinson.com G R A Y R O B I N S O N 1404 Dean Street, Suite 300 Fort Myers, Florida 33901 T: 239-340-7979 F: 239-321-5334



Jeffrey H. Gage ~~CCIM, SIOR, MNCIS~~
Senior Vice President

CBRE, Inc.
Capital Markets

527 Henley Drive
Naples, FL 34104-6532

+1 239 330-7665 Direct
+1 203 326-0075 Cell

Jeffrey.gage@cbre.com
www.cbre.com/jeffrey.gage

October 26, 2020

Mr. Chris Magnus via email magnuscp@hotmail.com
Mr. Jim Magnus
c/o Bonita Storage Inn
8841 West Terry Street
Bonita Springs, FL 34135

**RE: Letter of Intent for Purchase
27333 Old 41 Road
Bonita Springs, FL 34135**

Dear Chris:

CBRE has been authorized by the City of Bonita Springs ("Seller") to represent them in their effort to select a developer to purchase and improve the subject property. This Letter of Intent "LOI" shall set forth the terms and conditions that the Seller has authorized us to present to you.

It is understood that this LOI is not intended to be a legally binding agreement and that it is solely for facilitating negotiations between the parties. No legally binding agreement shall exist unless and until a formal and definitive Purchase and Sale Agreement "PSA" has been negotiated, drafted, and approved by the respective parties and their legal counsel and executed and delivered by such parties.

We look forward to completing these negotiations with you and to the completion of your proposed project.

Sincerely,

cc: City of Bonita Springs

Offer to Purchase/LOI	11-13-2020
------------------------------	------------



Mr. Chris Magnus
November 13, 2020
Page 5 of 8

BUYER:	A single purpose entity to be formed. c/o Chris, Jim and Susie Magnus
ASSIGNMENT OF PURCHASE AND SALE AGREEMENT "PSA":	PSA may not be assigned by Buyer without Seller's prior written consent.
SELLER:	City of Bonita Springs 9101 Bonita Beach Road SE Bonita Springs, FL 34134
PROPERTY:	27333 Old 41 Road Bonita Springs, FL 34135, and all associated rights to future development.
PURCHASE PRICE:	\$425,000.00
PAYMENT TERMS:	10% cash deposit in escrow on signing of the purchase and sale agreement, with credit for previously paid amount of \$21,250.00. Balance in cash on closing.
FINANCING TERMS:	None This is an all cash transaction.
CLOSING DATE:	30 days after all conditions have been satisfied. Seller's desire is to close as soon as possible.

Mr. Chris Magnus
November 13, 2020
Page 5 of 8

CONDITIONS:	1. Title Search. The Seller at its expense shall deliver the Property to the Buyer on the closing date free and clear of any leases, liens or other encumbrances. 2. Zoning compliance review against anticipated uses, to include a zoning verification letter, and any necessary special exceptions, modification or revocation of restrictive ordinances and issuance of site development plan and building permits. 3. The Buyer's ability to provide proof of funds needed to complete the entire development with in the agreed to time frame pursuant to the Development Agreement defined below. 4. Sellers City Council Approval 5. Phase 1 and as required phase 2 environmental. 6. Execution of mutually acceptable Development Agreement between the parties. 7. Approval of use to include liquor sales.
--------------------	--

OPEN POINTS:	During the negotiation of the PSA the parties will discuss and negotiate in good faith the following business points. 1. Any conditions requested by the Buyer that are not listed above and categorized as generally accepted terms and conditions for a project of similar scope. 2. A Development Agreement between the parties to include the plan of development, general timeframe for the overall project schedule and key benchmarks, and offsite parking areas ("Development Agreement"). It is important to both parties that this project starts and finishes in a timely manner. 3. The parties will agree that if all of the conditions and approvals required are not obtained within a maximum time period set forth in the PSA, then the Buyer and Seller will each have the right to terminate the PSA whereupon Buyer will receive a refund of all deposit monies. 4. A provision that facilitates Buyer to continue as operator by imposing a flat fee penalty equal to \$75,000.00 if a sale occurs within 5 years of the effective date of the PSA. 5. The project will include non-exclusive offsite parking located on Lemon Tree as further set forth in the RFP, which Buyer may improve and shall have the right to count such parking spaces to satisfy any parking requirements for the food truck park. 6. The City may also provide the Buyer access to additional offsite parking that is currently being utilized by Lee County, and if desired, Buyer may improve the same and utilize such parking on a non-exclusive basis for the food truck park. Neither the City nor the Buyer shall be obligated to provide, accept
----------------------------	---

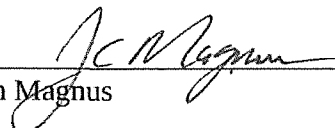
DUE DILIGENCE:	The Buyer shall have a period of thirty (30) days following the execution of the PSA to conduct any due diligence related to the project and the land. If the Buyer determines that the land is not suitable for Buyer's project, in Buyer's sole and absolute discretion, Buyer shall have the right to terminate the PSA and receive a refund of all the deposits. During the course of negotiating the PSA, the Buyer will provide the Seller with a detailed list of all the diligence items to be supplied by the Seller. The Seller will use best efforts to supply these items to the Buyer at or prior to PSA signing. All diligence materials produced and paid for by the Buyer may be transferred to the Seller, at the Buyer's actual cost, in the event a closing does not occur.
REQUESTED DILIGENCE:	Buyer would like to request the following information from the Seller, without representation or warranty: 1. Surveys. 2. Current zoning documentation. 3. Any environmental assessments and reports. 4. Appraisals. 5. Tax Information. 6. Any other documentation or information relating to the subject property in the Seller's possession or control.
DOCUMENTS FOR REFERENCE	The documents listed below will be used to draft specific provisions in the PSA 1. Request for Proposal #20-02 issued by CBRE on behalf of the Seller dated 1-24-2020 2. Chris Magnus response submitted 5-14-2020 along with associated spreadsheets 3. Chris Magnus amendment email dated 6-4-2020 along with associated spreadsheets

MONEY AT RISK:	Any Deposit shall be at risk after all conditions of the purchase and sale agreement have been satisfied.
TARGET DATES AND TIMING:	Review draft PSA December 17, 2020 Start Due Diligence November 9, 2020 Sign PSA January 29, 2021 Complete Diligence February 26, 2021 Waive all conditions TBD Close on sale May 1, 2021
CONFIDENTIALITY:	All negotiations are confidential and only those allied professionals with a “need to know” will understand the terms and status of our deal. If the press or the public makes any inquiry, we will decline comment until after the closing and the parties agree on the appropriate “press release”. Notwithstanding, it is understood that unless statutorily exempt all communications, negotiations, and records relating to the sale are subject to Florida’s public meeting and records laws.
NON-BINDING:	It is understood that this LOI is not intended to be a legally binding agreement and that it is solely for facilitating negotiations between the parties. No legally binding agreement shall exist unless and until a formal and definitive purchase and sale agreement has been negotiated, drafted, and approved by the respective parties and their legal counsel and executed and delivered by such parties.
BROKERAGE:	The Sellers broker is CBRE. The parties agree that Buyer is responsible for the payment of any commissions or fees due CBRE per the terms of the RFP and an agreement to be signed with the Buyer.

Mr. Chris Magnus
November 13, 2020
Page 5 of 8

BUYERS ATTORNEY:	Craig D. Grider, Esq. Coleman, Yovanovich & Koester, P.A. 4001 Tamiami Trail North, Suite 300 Naples, Florida 34103 T: 239-435-3535 F: 239-435-1218 Email: cgrider@cyklawfirm.com
SELLERS ATTORNEY:	Richard Swift Richard.Swift@gray-robinson.com GRAY ROBINSON 1404 Dean Street, Suite 300 Fort Myers, Florida 33901 T: 239-340-7979 F: 239-321-5334

Accepted this 13th day of November, 2020 by:



Jim Magnus



Chris Magnus

CITY COUNCIL
CITY OF BONITA SPRINGS
FINAL MILLAGE AND BUDGET HEARING
SEPTEMBER 16, 2020

5:05 P.M.

BONITA SPRINGS FIRE CONTROL AND RESCUE DISTRICT
27701 BONITA GRANDE DRIVE
BONITA SPRINGS, FL 34135
MINUTES

I. CALL TO ORDER.

Deputy Mayor Mike Gibson called the meeting to order at 5:07 P.M.

II. PLEDGE OF ALLEGIANCE.

Deputy Mayor Gibson led in the Pledge of Allegiance.

III. ROLL CALL.

Deputy Mayor Mike Gibson, and Council Member Amy Quaremba, Laura Carr, Jesse Purdon, Chris Corrie and Fred Forbes were in attendance. Mayor Peter Simmons was not in attendance.

Deputy Mayor Gibson motioned to allow Council Member Carr to participate via telephone; Council Member Corrie seconded; and the motion carried unanimously.

IV. OVERVIEW OF THE FINAL MILLAGE AND BUDGET PUBLIC HEARING.
(GREENSHEET NO. 20-09-273)

Finance Director Anne Wright read into the record the background as reflected on the Greensheet.

V. PUBLIC COMMENT.

Rick Steinmeyer addressed the purpose of the budget, which he stated is to serve the public, to provide safe roads, sidewalks and parks. He addressed additional services it's to provide.

VI. COUNCIL DISCUSSION OF THE FINAL BUDGET.

A brief Council discussion was held.

VII. PUBLIC HEARINGS

A. A RESOLUTION OF THE CITY OF BONITA SPRINGS, LEE COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF BONITA SPRINGS, LEE COUNTY, FLORIDA, FOR FISCAL YEAR 2020-2021; (GREENSHEET NO. 20-09-274)

Council Member Fred Forbes motioned to approve; Council Member Purdon seconded.

Director Wright read into the record the background as reflected on the Greensheet. The proposed millage is .8173 mills.

The motion carried unanimously. **ADOPTED RESOLUTION NO. 20-94**

B. A RESOLUTION OF THE CITY OF BONITA SPRINGS, LEE COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2020-2021 AND PROVIDING AN EFFECTIVE DATE. (GREENSHEET NO. 20-09-275)

The City Manager's Draft Budget as of August 3, 2020 is available on the City's website at www.cityofbonitasprings.org

Finance Director Wright read the resolution into the record.

Council Member Purdon motioned to approve; Council Member Forbes seconded; and the motion carried unanimously. **ADOPTED RESOLUTION NO. 20-95+**

VIII. PUBLIC COMMENT.

No public comments were made.

IX. ADJOURNMENT.

There being no further items to discuss, the meeting adjourned at 5:14 P.M.

Respectfully submitted,

Debra Filipek, City Clerk

APPROVED:
CITY COUNCIL

Date: _____
AUTHENTICATED:

Deputy Mayor Mike Gibson