



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

City of Bonita Springs City Council Meeting Agenda

April 3, 2024
5:30 p.m.

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

To submit your public comment in writing, please email your name, address, and comments to CITYMEETINGS@CITYOFBONITASPRINGS.ORG. **Any written public comment must be received by 3:00 p.m. on April 2, 2024.**

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

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

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Mayor’s Welcome
7. Public Comment on Agenda Items

8. Consent Agenda:

- A. Approval of minutes from the City Council meeting held on March 20, 2024.
- B. Confirm and ratify Resolutions extending the local State of Emergency due to Hurricane Ian. (Green Sheet 24-04-048)
- C. Authorize the City Manager to sign the Partnership Agreement between the City of Bonita Springs and the YMCA of Southwest Florida for the 2024 Summer Camp program as well as the afterschool program for the 2024-2025 school year. (Green Sheet 24-04-050)
- D. Approval of the Caretaker's Agreement for the Bonita Nature Place. (Green Sheet 24-04-051)
- E. Approval of the Special Event Permit for the Memorial Day Service and temporary road closure of Old US 41 Road from Wilson Street to Ragsdale Street for the duration of the service on Monday, May 27, 2024. (Green Sheet 24-04-052)
 - Opportunity for City Council Comments on Consent Agenda

9. Mayor and Council Member Items:

- A. Consideration of an appointment to the Historic Preservation Board. (Mayor Steinmeyer, Green Sheet 24-04-049)

10. Public Hearings:

- A. Second Reading and Public Hearing of an Ordinance of the City of Bonita Springs; Authorizing the Lease of Real Property Known as Everglades Wonder Gardens; And Providing for an Effective Date. (Green Sheet 24-04-053)

11. City Attorney's Items:

12. City Manager's Items:

- A. Update on Hurricane Ian recovery.

13. Mayor and Council Member Reports

14. Public Comment

15. Adjournment



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

City of Bonita Springs
City Council
Draft Meeting Minutes

March 20, 2024
9:00 a.m.

1. Call to Order

Mayor Rick Steinmeyer called the meeting to order at 9:00 am.

2. Invocation

Invocation provided by Rev. James Julian of New Life Church of Bonita Springs

3. Pledge of Allegiance

Mayor Steinmeyer led the Pledge of Allegiance.

4. Roll Call

The City Clerk called the roll:

Present: 7 Mayor Steinmeyer, Council Member Bogacz, Council Member Purdon,
Council Member Carr, Council Member Corrie, Council Member Fullick,
Deputy Mayor Forbes

Absent: 0

5. Approval of Agenda

Mayor Steinmeyer motioned to approve the agenda; Council Member Purdon seconded. The motion carried unanimously.

6. Mayor's Welcome

Mayor Steinmeyer welcomed and thanked citizens in attendance and those viewing the livestream.

7. Public Comment on Agenda Items

Trish Leonard - Expressed support for agenda item 9c (Law Enforcement Services addendum), further stating that additional measures should be considered to slow cut-through traffic on downtown side streets. She also thanked Council Member Purdon for his role in developing a new agreement with Bonita Wonder Gardens, Inc.

8. Proclamations and Presentations:

- A. Update on the Fairwinds HOA/FGCU joint project to improve water quality of stormwater detention ponds in the Fairwinds community. (Council Member Corrie; Green Sheet 24-03-040)

Dr. Ben Hershenson, President of Fairwinds HOA and Dr. James Douglass, Associate Professor of Marine and Earth Sciences at FGCU, presented on the progress of the ongoing project to improve stormwater detention pond water quality within the Fairwinds community.

9. Consent Agenda:

Council Member Corrie motioned to approve the consent agenda; Council Member Carr seconded. The motion carried unanimously.

- A. Approval of minutes from the City Council meeting held on March 6, 2024.
- B. Confirm and ratify Resolutions extending the Hurricane Ian State of Local Emergency. (Green Sheet 24-03-041)
- C. Approval of the Sixteenth Addendum to Second Agreement with the Lee County Sheriff for Enhanced Law Enforcement Services. (Green Sheet 24-03-043)
- Opportunity for City Council Comments on Consent Agenda

10. Mayor and Council Member Items:

- A. Discussion and direction regarding proposed operating agreement with Bonita Wonder Gardens, Inc. providing for operations of the Everglades Wonder Gardens site. (Council Member Purdon, Green Sheet 24-03-046)

City Manager Hunter provided a brief background summary, stating that after the joint workshop last November, City Council gave approval to rework the operating agreement with the Bonita Wonder Gardens (BWG) Board of Directors. Council Member Purdon was appointed as the liaison for the Council in this process. She further stated that the City Charter requires the adoption of an ordinance authorizing the lease of city real property in excess of \$15,000 in value, the First Reading of that ordinance will occur at today's meeting under agenda item 11a.

Council Member Purdon thanked BWG Board Chair Wendy Arsenault and Executive Director Neil Anderson. He commended the leadership's renewed vigor, which he believes bodes well for the success of a forthcoming agreement and the promise of a strong partnership. He then outlined the key elements of the agreement as detailed in the summary of the agenda item.

Council Member Corrie remarked that the proposed elements of the new agreement lay out a sustainable long-term plan to ensure the Wonder Gardens will thrive and continue for future generations. He then motioned to approve the elements of the agreement; seconded by Council Member Carr. The motion carried unanimously.

11. City Attorney's Items:

- A. First reading of an ORDINANCE OF THE CITY OF BONITA SPRINGS; AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS EVERGLADES WONDER GARDENS; AND PROVIDING FOR AN EFFECTIVE DATE. (Green Sheet 24-03-047)

The Clerk read the Ordinance title into the record. Mayor Steinmeyer motioned to move to Second Reading, seconded by Council Member Carr. The Clerk called the roll; the motion carried unanimously.

Clerk's note: The public hearing/Second Reading of the Ordinance will take place at the regular City Council meeting, 5:30 p.m., Wednesday, April 3, 2024, in City Hall Council Chambers.

12. City Manager's Items:

- A. Presentation and review of the January Financial Report. (Green Sheet 24-03-044)

Finance Director Lisa Griggs-Roberson presented the January Financial Report.

- B. Approval of annual update to employee salary ranges, effective April 1, 2024.

Finance Director Lisa Griggs-Roberson presented the item, stating the annual update to employee salary ranges is based on the consumer price index for our region, pursuant to the City Charter. She stated the annual update is important for recruitment and retention of employees. Council Member Fullick motioned to approve; Council Member Corrie seconded. The motion carried unanimously.

- C. Acceptance of the ResilientLee Recovery and Resilience Plan. (Green Sheet 24-03-045)

City Manager Hunter informed Council that the County Commissioners voted to accept the Recovery and Resilience Plan at their meeting yesterday. Mayor Steinmeyer motioned to accept the plan; Deputy Mayor Forbes seconded. The motion carried unanimously.

- D. Update on Hurricane Ian recovery.

Provided under Agenda Item 12c.

Other City Manager Business

Assistant City Manager Matt Feeney provided a reminder of the upcoming public hearing hosted by Florida Department of Transportation on the US 41/ Bonita Beach Road Intersection Project, at 5:30 pm, March 26, 2024, at the Bonita Springs Recreation Center, 26740 Pine Ave. Options for the project will be presented and the public will have an opportunity to offer comments.

13. Mayor and Council Member Reports

Council Member Carr - Provided an update on recent grand opening of businesses in the City.

Council Member Purdon - Thanked Dr. Ben Hershenson for the presentation under agenda item 8a, further commenting that the City was made safer with Council's approval of agenda item 9c (Law Enforcement Services addendum).

Council Member Bogacz - Provided an update on new hires in the Fire Control & Rescue District.

Deputy Mayor Forbes - Reported on the recent Post Legislative Session luncheon with members of the Southwest Florida delegation in attendance.

Council Member Fullick - Thanked Council Member Corrie for the work that he did on the City's behalf as a member of the Recovery Task Force. He further stated that plans are underway for the City's Memorial Day ceremony.

Council Member Corrie - Stated the agenda of the March 22nd MPO meeting includes an important discussion on the Rails to Trails project.

Mayor Steinmeyer - Thanked the Sheriff's Department for doing an excellent job to ensure our City remains one of the safest in the State.

14. Public Comment

Catherine Grain – Requested the City build an agility course at the Bonita Dog Park. Ms. Grain submitted to the City Clerk a copy of a petition containing 176 signatures of those in support of adding an agility course. Staff will review options, feasibility, and costs associated with the request.

15. Adjournment

There being no further business, the meeting adjourned at 10:32 a.m.

Prepared by:

Mike Sheffield, City Clerk

APPROVED BY CITY COUNCIL

Date: _____

Rick Steinmeyer, Mayor

REQUESTED MOTION: Confirm and ratify Resolutions extending the Local State of Emergency due to Hurricane Ian.

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

AGENDA: Consent

STRATEGIC PRIORITY:

BACKGROUND:

Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and declared a state of emergency, pursuant to Chapter 252, Florida Statutes. As Hurricane Ian posed a serious threat to our area, an ultimate landfall directly affected the City of Bonita Springs. Consistent with Florida statutes, the following Resolutions were prepared and signed by the Mayor and staff to extend the Local State of Emergency in seven day increments.

At this time, it is appropriate for City Council to ratify the continued Local State of Emergency.

STAFF RECOMMENDATION: Approve

ATTACHMENTS:

1. Resolution No. 24-019 issued on March 18, 2024
2. Resolution No. 24-020 issued on March 25, 2024

REVIEWERS:

City Manager: Arleen Hunter

City Attorney: Derek Rooney

City Clerk: Mike Sheffield

CITY OF BONITA SPRINGS
RESOLUTION NO. 24-019

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA
SPRINGS DECLARING A STATE OF LOCAL EMERGENCY
RESULTING FROM HURRICANE IAN; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

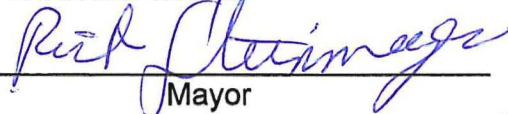
Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 18th day of March, 2024.

AUTHENTICATION:

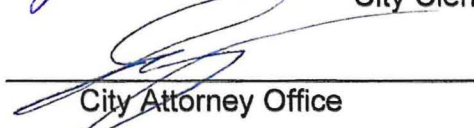


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney Office

Date filed with City Clerk: _____

3/26/24

CITY OF BONITA SPRINGS
RESOLUTION NO. 24-020

**AN EMERGENCY RESOLUTION OF THE CITY OF BONITA
SPRINGS DECLARING A STATE OF LOCAL EMERGENCY
RESULTING FROM HURRICANE IAN; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Governor Ron DeSantis signed Executive Orders 2022-218 and 2022-219, in response to the anticipated landfall of Hurricane Ian and has declared a state of emergency, pursuant to Chapter 252, Florida Statutes; and,

WHEREAS, on September 26, 2022 the City declared a local State of Emergency ahead of the landfall of Hurricane Ian; and

WHEREAS, Hurricane Ian had a significant impact on this area, the effects of which are still being fully ascertained and include extensive flooding, wind and water damage, not only to public infrastructure but to homes and businesses throughout the City; and

WHEREAS, the effects of Hurricane Ian continue to pose a serious threat to the lives and property of residents of the City of Bonita Springs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor on behalf of the City Council of the City of Bonita Springs, Lee County, Florida;

Section 1. The recitals above are hereby incorporated herein.

Section 2. The current State of Emergency is extended.

Section 3. This resolution shall take effect immediately upon adoption. Consistent with Florida Statutes §252.38(3), the duration of this state of emergency declared locally is limited to 7 days and may be extended, as necessary by resolution, in 7-day increments.

DULY PASSED AND ENACTED by the Mayor of the City of Bonita Springs, Lee County, Florida, this 25th day of March, 2024.

AUTHENTICATION:

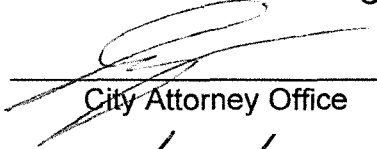


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney Office

Date filed with City Clerk:

3/27/24

REQUESTED MOTION: Authorize the City Manager to sign the partnership agreement between the City of Bonita Springs and the YMCA of Southwest Florida for the 2024 Summer Camp program as well as the afterschool program for the 2024-2025 school year, which will both be held at the Bonita Springs Recreation Center.

REQUESTOR: Nicole Perino, Parks and Recreation Director

AGENDA: Consent

STRATEGIC PRIORITY: No

BACKGROUND:

In December 2017, the City entered into an agreement with the Sky Family YMCA, now known as the YMCA of Southwest Florida, with the same terms and conditions as with the previous program administrator, Sports Club, Inc., for the remainder of the 2017-2018 school year and for the summer camp program for 2018. Council approved the continuation of this partnership agreement for the 2018-2019, 2019-2020, 2020-2021, 2021-2022 and 2022-2023 school years as well as for the 2019, 2020, 2021, 2022 and 2023 Summer Camp programs following all CDC guidelines for children's summer camp operations.

The YMCA of Southwest Florida would like to continue this partnership for the 2024 summer camp program as well as for the 2024-2025 school year to serve the children and families of the Bonita Springs community.

Due to inflation increases, the YMCA of Southwest Florida has requested an increase in fees for both the Afterschool and Summer camp programs. The Afterschool program fees will increase from \$55 per week per participant to \$75 per week per participant, and the full-day afterschool program will increase from \$25 per day per participant to \$40 per day per participant. Additionally, the Summer Camp program will increase from \$120 per week per participant to \$140 per week per participant.

STAFF RECOMMENDATION: Authorize the City Manager to sign the agreement.

ATTACHMENT:

1. 2024-2025 YMCA of Southwest Florida Agreement

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Nicole Perino

AFTER SCHOOL AND SUMMER CAMP PROGRAM AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of April, 2024, by and between the City of Bonita Springs, a Florida municipality whose mailing address is 9101 Bonita Beach Road, Bonita Springs, Florida 34135 (hereinafter, the "City"), and YMCA of Southwest Florida, a Florida non-profit corporation whose mailing address is 27200 Kent Road, Bonita Springs, Florida 34135 (hereinafter, the "YMCA").

WITNESSETH:

WHEREAS, the City desires to partner with the YMCA for the purpose of providing an after school program and a summer camp program for the children of Bonita Springs; and

WHEREAS, the YMCA has the necessary expertise, personnel, and desire to safely and efficiently provide such services on behalf of the City in accordance with the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

General Provisions:

1. The YMCA shall plan, organize, schedule, direct, coordinate, provide, and supervise instructional and recreational activities in order to provide an After School and Summer Camp Program (hereinafter, the "Program") at the Bonita Springs Recreational Center located at 26738 Pine Avenue, Bonita Springs, Florida 34135. A detailed Program Summary is attached hereto as Exhibit "A" and incorporated herein by reference.
2. The YMCA shall be solely responsible for the hiring, managing, and supervision of its employees and contractual services necessary for the performance of its obligations hereunder. The YMCA shall only employ qualified personnel over the age of eighteen (18) years old following appropriate background checks as required for the safe and efficient provision of services. Persons with criminal backgrounds shall not be hired. The YMCA shall submit the names and addresses of all employees hired for the Program and shall submit written notification to the City that all employees have undergone and passed a background check.
3. The YMCA shall hire and manage all employees necessary to maintain a maximum ratio of one (1) staff member per fifteen (15) registrants for the duration of the Program.
4. The YMCA shall ensure that the Program is operated in accordance with all applicable City, County, State, and Federal laws and that the YMCA obtains the Florida Department of Children and Families Child Care Facility license for both the afterschool and summer camp programs as well as any other necessary permits, licenses, or certifications required for such a program or for the facilities for the Program. The YMCA shall immediately notify the City should additional licensing or permitting become required in order to operate the Program.
5. At all times, the YMCA shall ensure that its insurance policies are current and include protection to the City against claims for bodily injury, personal injury, abuse claims, and property damage sufficient to the City's satisfaction.

6. The YMCA and its employees, contractors, and volunteers shall maintain the highest standards of customer service in the supervision and coordination of the Program and shall be further required to adhere to and implement the City's policies and procedures, including Standard Operating Procedures, nondiscrimination policies, and any other applicable governing policies.
 - a. Any complaint received by the City concerning the facilitation of the Program shall be formalized in writing and provided to the YMCA for review. The YMCA shall then provide the City with a written report detailing the circumstances of the complaint and the resolution (or attempted resolution) within ten (10) working days of receipt of the complaint.
 - b. Any complaint received by the YMCA relating to the Program shall be disclosed immediately to the city and shall be formalized in writing and provided to the City along with a written report detailing the circumstances of the complaint and the resolution (or attempted resolution) within ten (10) working days of receipt of the complaint.
7. The City and the YMCA shall be jointly responsible for the advertising, publication, and communication of the Program. The advertisement or publication shall be designed to solicit and encourage participation by the public, and the information shall clearly indicate that the Program is sponsored by the City. The City reserves the right to review and approve any advertisement, publication or communication, but shall not unreasonably delay the distribution of same.
8. The YMCA shall be responsible for all costs and expenses, including, but not limited to, permitting fees, staff compensation, instructor fees, equipment and maintenance, materials and supplies, transportation costs, and participant awards. The YMCA shall be solely responsible for the timely payment of its employee salaries and any contractual obligations and for all required reporting of its taxes and benefits.
9. The YMCA shall charge and collect all fees for participation in the Program. The City shall be compensated with 10% of the fees collected from each participant, and the YMCA shall retain the remaining 90% of the fees.
10. The YMCA shall make one (1) payment to the City within ten (10) days of the end of the school year and one (1) payment to the City within ten (10) days of the end of the Summer Camp portion of the Program. With each session payment, the YMCA shall submit to the City a list of participants and the fees paid by the participants for that session. Such payments shall be made in accordance with the YMCA registration records.
11. The City shall have the right to inspect and audit the YMCA's financial records relating to the Program during normal working hours.
12. The City shall not be held responsible for any damages occurring to the YMCA's property or equipment during the operation of the Program, unless such damage is caused by gross negligence or willful misconduct by the City, its agent, or its employees.

Miscellaneous Provisions:

1. Waiver of Subrogation. The City and the YMCA each hereby waive any and every claim for recovery from the other for any and all loss or damage to City or YMCA facilities, or to the contents thereof, during the delivery of the Program, which loss or damage is covered by valid and collectible property damage insurance policies, but only to the extent that such loss or damage is covered by valid and collectible property damage insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), the City and the YMCA each agree to give to each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of its mutual waiver, and to have said insurance policies property endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.
2. General Liability. The YMCA shall procure and maintain in effect from the date of this Agreement at all times until the end of the term (including any extension or renewal hereof) Broad Form Commercial General Liability insurance against claims for bodily injury, personal injury, and property damage, based upon or arising from its operation, management, or supervision of the Program. Such insurance shall be primary and shall include Broad Form Contractual liability insurance coverage insuring the YMCA's indemnity obligations under this Agreement. Such coverage shall have a minimum combined single limit of liability of at least \$1,000,000 in the aggregate. Such insurance shall not limit the YMCA's liability under any provision of this Agreement.
3. Worker's Compensation. The YCMA shall maintain worker's compensation insurance in accordance with Florida Statutes.
4. Indemnification of the City. The YMCA agrees to hold harmless, indemnify, and defend the City, its agents, officers, and employees from any and all claims, losses, damages, penalties, demands, judgments, costs and legal expenses arising directly or indirectly from or in connection with the services performed under this Agreement or by any person or corporation to whom any portion of services are subcontracted by the YMCA r by anyone for whom the YMCA is legally liable; except that the YMCA shall not be liable under this paragraph if the judgment arises out of gross negligence or willful misconduct by the City, its agents, officers or employees.
5. Indemnification of the YMCA. The City agrees, as limited by Florida statutes, to hold harmless, indemnify, and defend the YMCA and its agents, officer, and employees from any and all claims, losses, penalties, demands, judgments, costs and legal expenses arising directly or indirectly from or in connection with any gross negligence or willful misconduct by the City, its agents, officers, or employees in the performance of this Agreement.
6. Default. The occurrence of any of the following events ("Event(s) of Default") shall constitute a breach of this Agreement by the YMCA. Upon the occurrence of any Event of Default, the City shall provide written notice of termination of this Agreement to the YMCA, and such termination shall become effective not less than thirty (30) days after the date on which the notice is provided to the YMCA.
 - a. *Failure to Perform* shall be deemed an Event of Default when the YMCA materially defaults in the performance or delivery of the Program and fails to cure the default in reasonable time after demand by the City.

- b. *Insolvency* shall be deemed an Event of Default when the YMCA makes a general assignment for the benefit of its creditors, or admits in writing its inability to pay its debts as they become due, or files a petition for bankruptcy, or becomes adjudicated as bankrupt or insolvent, or files a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, or similar relief under any present or future statute, law, or regulation.
7. Termination. Either party may terminate this Agreement for convenience by providing written notice of such intent at least thirty (30) calendar days in advance of the effective date of termination. Any costs obligated or contracted by the YMCA beyond the 30 day notice period shall be approved by payment by the City to the extent that such costs and payments are related to the services incurred pursuant to this Agreement and otherwise eligible for payment hereunder. This provision for payment eligibility is only applicable to cost obligations having been transacted by the YMCA prior to the written notice of termination.
8. Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
9. Waiver. No waiver by any party of any of the provisions herein shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
10. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth below. Such communications, if sent by mail, shall be deemed delivered three (3) days after deposit in the United States mail, or if delivered by hand or courier, at the time of delivery.

To the City:
Parks & Recreation Director
City of Bonita Springs
26740 Pine Avenue
Bonita Springs, FL 34135

To the YMCA:
Executive Director
27200 Kent Road
Bonita Springs, FL 34135

With copies to:
City Manager and City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

11. Term. The Program delivered pursuant to this Agreement shall commence on June 3, 2024, and shall conclude on May 30, 2025. Any extension must be executed upon the written Agreement of each party, and may be subject to competitive bidding in future years.
13. Relationship of the Parties. Nothing herein shall be construed to create a joint venture or partnership between the parties or an employee/employer or agency relationship. The YMCA shall serve as an independent contractor in the performance of its duties and obligations hereunder. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.
14. Assignment. Neither party may assign any of its rights hereunder without the prior written consent of the other party. Such consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment in violation of this section shall be null and void.
15. Amendment and Modification. No changes or modifications to this Agreement shall take effect unless the same is in writing and formally executed by both parties.
16. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction

COVID-19 ACKNOWLEDGEMENT

1. Both the City and the YMCA acknowledge and understand the circumstances of the COVID-19 pandemic and will take all reasonable precautions, consistent with the applicable guidance issued by the Center for Disease Control (CDC) and the Florida Department of Health (FDOH) in order to limit the spread of COVID-19 and promote the health and safety of Program participants, parents, and staff.
2. The City and the YMCA acknowledge and understand that the circumstances of the pandemic create a fluid situation and that the guidance provided by the CDC and the FDOH may change during the term of this Agreement. Both parties shall monitor the situation closely and adjust operations as may become necessary.
3. In the event that any Order is issued by the City, by Lee County, by the Florida Governor, or by the President of the United States that affects this Agreement, such Order shall supersede. The City shall have the sole discretion as to whether the Agreement may endure any such Order, including, but not limited to, the suspension or cancellation of the Program.

This space left intentionally blank.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF BONITA SPRINGS

YMCA OF SOUTHWEST FLORIDA

By: _____
City Manager

By: _____
YMCA Authorized Representative

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM: _____
City Attorney

Exhibit A

After School and Summer Camp Program Summary

1. For the term of this Agreement, session fees shall be:

Full Week After School Session	\$75 per participant per week
Part-time After School Session	\$15 per participant per day
Full Day Afterschool Program	\$40 per participant per day
Full Week Summer Camp Session	\$140 per participant per week
Part-time Summer Camp Session	\$30 per participant per day
One-time Application/Processing Fee	\$30 per participant

*Parents are required to register the Thursday before each week (for both weekly and part-time participants) for both after school sessions and summer camp sessions. Parents may register at the Bonita Springs Recreation Center or at the Bonita Springs YMCA.

2. For the term of this Agreement, session hours shall be as follows:

After School Program: Monday – Friday 2:45 pm – 6:30 pm

- On weekdays with no school, the Program will be open 7:00 am – 6:30 pm.
- On weekdays with a half-day of school, the Program will be open from the time that school lets out until 6:30 pm.

Summer Camp Program: Monday – Friday 7:00 am – 6:30 pm.

Both Programs will be closed during holidays for which the Recreation Center is closed including, but not limited to the following:

- | | |
|-------------------------------|---------------------------|
| • January 1 | New Year's Day |
| • As designated in January | Martin Luther King Day |
| • As designated in February | President's Day |
| • Last Monday in May | Memorial Day |
| • July 4 | Independence Day |
| • First Monday in September | Labor Day |
| • November 11 | Veteran's Day |
| • Fourth Thursday in November | Thanksgiving Day |
| • Day following Thanksgiving | Friday After Thanksgiving |
| • December 25 | Christmas Day |

When a holiday falls on a Saturday, the preceding Friday shall be designated a substitute holiday and observed as the official holiday for that year. When a holiday falls on a Sunday, the following Monday shall be designated a substitute holiday.

3. The Program shall be continual, and shall follow the Lee County School District calendar. For example, Summer Camp Sessions shall commence the day immediately after the last day of school, unless the last day of school is on Friday.
4. Participants in the Program must be between the ages of five (5) to twelve (12) years old. During Summer Camp Sessions, there will also be a Teen Leadership Camp open to participants between the ages of thirteen (13) to fifteen (15) years old.
5. Each participant must be signed in upon arrival and signed out when leaving each session by a parent or guardian, and by the authorized staff member upon arrival at each After School Session. The YMCA shall ensure that a staff member is present to monitor the signing in and out of participants at all times.
6. The YMCA shall provide a Site Coordinator who shall remain on site at all times to supervise the Program participants and staff. The Site Coordinator should also be available to speak with parents during the signing in and out process of Program participants.
7. The YMCA shall ensure that the City has updated contact information, including but not limited to mobile phone numbers and email addresses, of the Site Coordinator and Program Director to allow for direct communication at all times that the Program is in session.

REQUESTED MOTION: Approve the Caretaker's Agreement for the Bonita Nature Place.

REQUESTOR: Nicole Perino, Parks and Recreation Director

AGENDA: Consent

STRATEGIC PRIORITY: #3 Community Aesthetics

BACKGROUND:

Jason Jaccarino, who is the Maintenance Manager of the Parks and Recreation Department, has been the Caretaker for the Bonita Nature Place residing in the caretaker residence located on the property for the past nine years. The caretaker's primary objective is to protect the property from vandalism and otherwise keep it secure as Council has previously determined to be necessary and in the best interest of the City.

Attached is the Caretaker Agreement for caretaker services for the Bonita Nature Place. Since 2014, City staff has decided it is appropriate for an employee to serve as caretaker. The terms of the Caretaker Agreement provide for a one-year lease with both parties able to extend, a monthly rental fee of \$450, and special requirements regarding parking, maintenance obligations, and preserving the natural state of the environment.

STAFF RECOMMENDATION: Approve the Caretaker Agreement for the Bonita Nature Place for a one-year term.

ATTACHMENTS:

1. Caretaker's Agreement

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Nicole Perino

CARETAKER'S AGREEMENT

This agreement is made on this ____ day of April, 2024, between Jason Jaccarino (Caretaker), whose address is 27601 Kent Road, Bonita Springs, FL 34135, and the City of Bonita Springs (City), whose address is 9101 Bonita Beach Road, Bonita Springs, Florida, 34135.

Whereas, the City is the owner of the property which is known as the Bonita Nature Place (the "Premises"). The Premises and all appurtenant property located in and about the Premises and all City park land and improvements surrounding or adjacent to the Premises are collectively referred to here as the "Property."

Whereas, in order to protect the Property from vandalism and otherwise keep it secure, and maintain a person on premises with certain duties with rent abatement, the City has determined that it is necessary and in the best interest of the City that Caretaker reside in the Premises.

Whereas, City desires that Caretaker reside in the Premises and Caretaker is willing to reside in the Premises to provide certain services as outlined in this agreement, subject to the terms of this agreement.

WITNESSETH:

In view of the above premises and in consideration of the promises and mutual covenants contained here, and for other valuable consideration, the receipt of which is acknowledged, City grants a license to Caretaker to reside in and otherwise occupy and use the Premises and appurtenant property, subject to the following terms and conditions:

1. The term of this Agreement will commence April 5, 2024, and shall run until April 4, 2025 unless extended by mutual agreement of the parties.
2. During the term of this agreement, Caretaker shall reside in the Premises and shall use his best efforts to protect the Property from vandalism and other abuse, damage, or destruction.
3. A monthly rental fee of \$450.00 shall be due and payable to City. The payment shall be deducted from payroll on a bi-weekly basis.
4. A deposit equal to one month's rent will be paid by Caretaker and will be refunded upon leaving the premises, less any actually costs deducted for any violations of this Agreement.
5. Caretaker shall take good care of the Premises and all fixtures, furnishings and other property belonging to the City located in and about the Premises and shall keep them in good repair (reasonable wear and tear expected) and in clean and healthy condition, and shall not damage or permit any other person to damage any part of the Premises.
6. If the Property is damaged, Caretaker shall immediately notify the Parks and Recreation Director of the nature, extent, and cause of the damage. If the damage was caused by Caretaker or any person or animal permitted by Caretaker to be on or about the Premises, Caretaker shall pay for any and all replacement repairs that shall be

necessary to put the Property in the same condition as when the caretaker entered the Premises, reasonable wear and tear is unavoidable and loss from fire unexpected.

7. Caretaker shall not make any alteration or additions to the Premises without first obtaining the written consent of the Parks and Recreation Director. All alterations and additions to the Premises shall become and remain the property of the City.

8. Caretaker shall not erect, or otherwise display any signs, placards or posters on or about and visible from the exterior of the Premises without first obtaining the written consent of the Parks and Recreation Director.

9. Caretaker shall not keep dogs, cats, or other animals which would disturb the wildlife. Caretaker may keep an indoor pet in or about the Premises after obtaining the written consent of the Parks and Recreation Director.

10. Caretaker shall not use the Property or permit the Property to be used for unlawful purposes or for purposes that might injure the reputation of the City. Caretaker shall not use the Property or permit the Property to be used in any way that might increase the rate of fire or liability insurance on the Property. Caretaker agrees to indemnify and hold the City harmless from any damages sustained as a result of Caretaker's negligence or wrongful acts or omissions that constitute a breach of this agreement.

11. The license granted to Caretaker under this agreement is exclusive to Caretaker and is nonassignable by Caretaker.

12. The City reserves the right to access the property, including the personal premises of the Caretaker, at the sole discretion of the City with 24 hours advance notice.

13. Caretaker shall not allow the Premises to be occupied or used by any other persons than those specified in this agreement and occasional guests, without first obtaining the written consent of the Parks and Recreation Director. Caretaker shall be responsible for the actions of any family members and all other persons occupying or using the Property with his permission.

14. Caretaker will not engage in any illegal activities or use the premises for any business purpose.

15. Caretaker may not drive a city vehicle to the Caretaker premises after working hours.

16. If Caretaker will be absent from the Premises for a period longer than two days on the weekend, he will notify the Parks and Recreation Director of his anticipated departure and return dates so that alternative plans can be made for the security of the Property.

17. Trash/Recycling. The Caretaker will make sure that their trash and recycling is placed in the appropriate bins set forth for that purpose, and that the rubbish or recycled material is taken to the curb area in time for pick-up. Any excessive pick-up necessary of non-household waste will be coordinated through contacting the Parks and Recreation Director.

18. Parking. Caretaker will park his personal vehicle, and any of his guests, in the parking lot. Caretaker will not park at Nature Center Building during operating hours.

19. Storage. No outdoor storage is permitted of any kind, for example, equipment, lawnmowers, and bikes. These are to be maintained in the shed.

20. Fragile environment: Caretaker will make sure any animals do not create a disturbance to the facility or property. Likewise, Caretaker may not light bonfires or disturb the natural state of the property, unless approved in advance by the Parks and Recreation Director.

21. City shall pay and be responsible for electricity, household garbage removal and water to the Premises. Caretaker shall pay and be responsible for cable, internet and telephone services.

22. City shall not be liable for any damage occasioned by failure to keep the Premises in repair, and shall not be liable for any damage from plumbing gas, water, steam or other pipes, sewerage, or the bursting, leaking or running from any cistern, tank, sink, toilet or wastepipe in or about the Premises, nor for damage by water, or ice, being on or coming through any roof, door or window, or otherwise. City shall not be liable for any injury sustained in or about the premises by Caretaker, Caretaker's family, or any invitee of Caretaker, or by any property of that person. Caretaker agrees to hold the City harmless from any costs incurred (including reasonable attorneys' fees) or damages sustained as a result of any such injury. Caretaker shall pay and be responsible for any renter's insurance to protect his personal property.

23. The license granted to Caretaker by City under this agreement shall commence on the date of this agreement and shall run for one-year terms, including any extensions, unless terminated on the first to occur of the following:

a) Thirty days from the date either party gives written notice of intent to terminate.

b) If Caretaker leaves the employ of the City, the Caretaker will vacate the premises within thirty (30) days of separation.

c) Breach or default by either party of any of the terms of this Agreement.

d) Material damage to or destruction of the Premises to render it untenable.

24. Upon the termination for any reason of the license granted to Caretaker, Caretaker and all other persons occupying or using the Premises through Caretaker shall immediately vacate the Premises, shall remove from the Premises all personal property and shall leave the Premises in a clean and "move-in" condition. City's use of the Premises after any termination of license shall be without prejudice to any remedies which might otherwise be due to City for arrears in payment of the monthly license fee or for damages to property, or otherwise.

25. City and Caretaker acknowledge and agree that this Agreement is not intended to and does not constitute a lease, and neither City nor Caretaker shall have any rights or remedies generally available to, nor obligation generally imposed upon, landlords and tenants under Florida statutory or common law, other than those set out in this

agreement. Noting contained within this agreement shall be construed as creating an employer/employee relationship between the City and Caretaker.

26. Any notice required or permitted to be given and any payment to be made under this agreement shall be deemed given and made if delivered personally or sent, postage prepaid, by registered mail, return receipt requested, to the Parties at the address listed in the first paragraph of this Agreement or to the addresses as the Parties may specify in writing.

27. This writing represent the entire agreement of the Parties with respect to this subject matter, it may not be altered or amended except by subsequent written agreement executed by the Parties.

IN WITNESS of the above, the parties execute this agreement.

ATTEST:

By: _____

Witness 1 (Signature)

Witness 2 (Print)

By: _____

Witness 1 (Signature)

Witness 2 (Print)

By: _____

Jason Jaccarino, Caretaker

ATTEST:

CITY COUNCIL OF BONITA SPRINGS

By: _____

City Clerk

By: _____

Mayor

APPROVED AS TO FORM

By: _____

City Attorney

REQUESTED MOTION: Approve the special event permit for the Memorial Day Service and temporary road closure of Old US 41 Road from Wilson Street to Ragsdale Street for the duration of the service on Monday, May 27, 2024.

REQUESTOR: Lora Taylor, Communications Director

AGENDA: Consent

STRATEGIC PRIORITY: N/A

BACKGROUND:

The Bonita Springs Memorial Day Ceremony is an annual service held on Memorial Day to honor those who have died while serving our country. This event is coordinated by the Bonita Springs Veterans Advisory Committee.

In 2023, Councilman Fullick requested an Old 41 road closure for the duration of the Memorial Day Service to provide a more peaceful and dignified environment in which to conduct the ceremony. Councilman Fullick and the Veteran Advisory Committee have expressed interest in continuing the road closure in 2024. Old 41 would be closed from Ragsdale St to Wilson St for the duration of the service (approximately an hour to an hour and a half).

Staff will also coordinate with the Lee County Sheriff's Office for the closure. Funding is provided for the event within the FY 2023-2024 Communication Department budget.

STAFF RECOMMENDATION Approve the special event permit for the Memorial Day Ceremony and temporary road closure of Old US 41 Road from Wilson Street to Ragsdale Street on Monday, May 27, 2024.

ATTACHMENTS:

1. Special Event Permit Application
 2. MOT Map
 3. Event Flyer
-

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield
Department Director:	Lora Taylor

You do not have to partner with the charities on this list. You may choose any charity. This list is intended as informational only.

**SPECIAL EVENT
PERMIT APPLICATION**

PERMIT. SEP- _____



City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Date Received: _____

Effective Date/Time: _____

Application Fee: ☐ \$50.00

Phone: 239/949-6262

Fax: 949-6239

☐ \$25.00 (501C3 organizations)

Fee is non-refundable

Use this form for: Parades, Festival/Carnival, Any Activity Requiring Off-Site Parking, Street Closure, Sound Amplification or City Personnel, Run/Race/Walk, Art Shows, Concerts, Special Musical Presentation, Street Dances, Photography Shoots, and Fireworks. For information call 949-6262.

Completed Special Event Permits take 45 days to process with all necessary attachments and without errors. Your permit will go to the next City Council Meeting after the 45 days. Please take this into consideration when planning your event.

Organization: City of Bonita Springs
Nature of Event: Memorial Day 2024
Location (Attach Site Plan): Riverside Park

Date

Set-Up Time

Actual Event Times

Take Down Time

05/27/2024 7am to 9am 9am to 12pm 12pm to 1pm

For multiple dates, please attach letter.

Has this event been held in the past? Yes If so, when was the last event? 2023
Individual Contact for Activity/Event: Karissa Minor Phone: 239-949-6262
Address: 9101 Bonita Beach RD SE Website: City of Bonita Springs.org
E-Mail Address: karissa.minor@cityofbonitasprings.org
Major Sponsor(s): City of Bonita Springs
Promoter(s): W/A Phone or Contact #: 239-949-6262

1. Crowd: Is anticipated crowd size 1,000 or more?

Yes ☐ No ☒

Actual Anticipated number: 150

2. Parking: Will off-site parking be provided? _____

☐ ☒

Will "shuttle" service to parking be provided? By whom? _____

☐ ☒

4. Noise: Will there be amplified music or entertainment? If yes, please attach type(s) of Entertainment and time(s) of performances(s). Indicated stage location(s) on siteplan.

☒ ☐

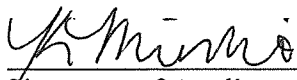
- | | Yes | No |
|---|-------------------------------------|-------------------------------------|
| 5. City Co-Sponsorship:
Is City co-sponsorship being requested? If yes, please explain with letter of attachment, listing benefitting organizations. | ☐ | ☒ |
| 6. Fireworks: Is this a public _____ or private _____ display? Applicant must comply with State Law F.S. 791; and NFPA 1123 and obtain any applicable Lee County permit. | ☐ | ☒ |
| 7. Banners, Signs, Etc.: Will exterior banners, balloons, signs or other types of advertising techniques be used? Temporary signs may only be placed in accordance with the Sign Ordinance. | ☐ | ☒ |
| 8. Alcohol Beverages: Will alcoholic beverages be sold _____ or consumed _____ on the premises? Please check one or both. A copy of the Florida Beverages Commission permit is required to finalize before event. Permit Holder: _____
Division of Alcoholic Beverages and Tobacco: (239) 278-7195. | ☐ | ☒ |
| 9. Security: Will private security be provided to protect exhibits, equipment or facilities brought on-site for the event? Name of Company: _____
Contact Number: _____ | ☐ | ☒ |
| 10. Private Property: Does the applicant own the property where the event is to be held? If not, please attach a letter of permission from the property owner. | ☐ | ☒ |
| 11. Public Safety: Will Police and Fire District Personnel be requested? (Based on responses to questions 1-6 certain Public Safety personnel may be required, i.e., Lee County Sheriff's Office, emergency services, fire, etc. Once staffing needs are determined, applicant will be required to provide copies of its contracts detailing obligated public safety staff necessary for event. | ☒ | ☐ |
| 12. Tents/Canopies: Will tents or canopies be used? <u>If yes, indicate on site plan the tent size, location, and type of surface on which the tent(s) will be installed and intended use of each tent.</u> | ☒ | ☐ |
| 13. Air Conditioning Units/Power Generators: Will exterior air conditioning units or power generating equipment be operated from vehicles or trailers? <u>If yes, indicate location of equipment on-site plan.</u> | ☐ | ☒ |
| 14. Food/Cooking: Will food be cooked _____ catered _____ on-site during this event? <u>Indicate on site plan the location of vendors and cooking equipment to be used.</u>
(Appropriately rated fire extinguishers required.) Lee County Health Department approval is required to finalize permit before event. Environmental Health Section: (239) 332-9559. | ☐ | ☒ |

- | | Yes | No |
|--|--------------------------|-------------------------------------|
| 15. Sanitary Facilities: | | |
| Will temporary sanitary facilities be provided? <u>If yes, indicate location on site plan.</u> | ☐ | ☒ |
| Will disposable cardboard trash receptacles be provided? <u>If yes, indicate on site plan.</u> | ☐ | ☒ |
| Will additional refuse containers/dumpsters be provided? | ☐ | ☒ |
| If yes, by whom: _____ | | |
| 16. Insurance Requirement: Permittee is required to obtain and present evidence of surety indemnity bond or comprehensive liability insurance naming the city as an additional insured. The insurance requirement is a minimum of \$1,000,000.00 general liability (personal injury) and \$100,000.00 property damage against all claims arising from permits issued pursuant to this ordinance, naming the city of Bonita Springs as additional insured . If the event poses higher risks than covered by such insurance, permittee shall be responsible for assessing the risks of the event and obtaining additional insurance coverage. | | |
| 17. Non-Profits are required to provide either a form 990 or a financial report to the city showing revenue from the event where at least 10% of the proceeds will remain within the Bonita Springs area, supporting the community or charities, within 60 days after the event. If the event is of a non-monetary nature, the non-profit must show they provide an impact to 5% of the area. | | |

DURING REVIEW BY VARIOUS CITY DEPARTMENTS, ADDITIONAL CONDITIONS MAY BE IMPOSED. THIS PERMIT IS VALID ONLY FOR THE TIME INDICATED ON THIS PERMIT. IN THE EVENT THAT THE APPLICANT FAILS TO FULFILL THE REQUIREMENT(S) AS SET FORTH IN THIS PERMIT, OR FAILS TO OBTAIN PROPER AUTHORIZATION TO PROCEED IF CONDITIONS HAVE CHANGED ON THE EXPECTED OUTCOMES, IMPACTS, OR SPECIFICATIONS, INCLUDING BUT NOT LIMITED TO TIME AND ACTIVITIES, THE PERMIT MAY BE CANCELLED BY THE CITY MANAGER AND THE ACTIVITY SHALL CEASE IMMEDIATELY.

I, the undersigned, will indemnify, defend, and hold harmless, the City of Bonita Springs, its agents, employees, officers and any and all other associates, from and against any and all actions, in law or in equity, from liability or claims for damages, demands or judgments to any person or property which may result now or in the future from the conduct of this event.

The undersigned has read and voluntarily signed the release and waiver of liability and Indemnity Agreement, and further agrees that no oral representations, statements, or inducements apart from the foregoing written agreement have been made.


02/27/2024
Comments: _____
 Signature of Applicant Date

 City Manager Date
Comments: _____

Application Fee is non-refundable.

The background of the entire poster is a stylized American flag. It features a blue field with white stars on the left side, and red and white stripes on the right side. The stars are arranged in a pattern that follows the curve of the flag's canton. The stripes are wavy and flow from the top to the bottom of the image.

The City of Bonita Springs

Memorial Day Service

Downtown Bonita Springs
Riverside Park

10450 Reynolds St, Bonita Springs, FL 34135

Monday May 27th, 2024
at 9:00 am

Join us as we honor those who have given
their lives in service to their country.

For questions, please call 239-949-6262



PLAN NOT TO SCALE

TEMPORARY TRAFFIC CONTROL SHALL COMPLY WITH THE CURRENT EDITION OF THE FDOT DESIGN STANDARDS (600 SERIES INDEX NUMBERS) AND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD).



AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION

DATE: 02/25/2014

This is to affirm that
Cameron Berger
has satisfactorily completed the
Florida Advanced Refresher Work Zone
Traffic Control Course
Date Complete: 12/19/2013 Status: PASS
Location: Tampa Instructor: Mr. Edward Kant
Date Refresher Course Required: 12/19/2017

ID: 037

Parking

Tent
20 x 30

Parking

REQUESTED MOTION: Consider an application for appointment to the Historic Preservation Board.

REQUESTOR: Rick Steinmeyer, Mayor

AGENDA: Mayor and Council Member Items

STRATEGIC PRIORITY: N/A

BACKGROUND:

On August 17, 2006, City Council approved Ordinance 06-08 establishing the Historic Preservation Board, later amended in Ordinance 09-02 and in Ordinance 13-20.

The Historic Preservation Board shall consist of seven members, at least five of whom shall be residents of the City. Appointment of all members shall be made based on a potential member's civic pride, involvement in community issues, integrity, experience, and interest in the field of historic preservation.

There are currently two vacancies on the board as the result of two resignations that occurred in 2022. Both vacancies are for terms set to expire on December 31, 2024.

The Historic Preservation Board currently consists of the following five members Alan Glazier (Chair), Ruth Condit, Alex Grantt, Richard Meyers, and Bonnie Whittemore.

Attached is an application to serve on the Historic Preservation Board submitted by Jacque James, a citizen of Bonita Springs District 5. If appointed, Ms. James' appointment will initially fill the remaining term of one of two vacant seats, both of which are set to expire on December 31, 2024.

STAFF RECOMMENDATION: Appointment of Jacque James to the Historic Preservation Board.

ATTACHMENTS:

1. Advisory Committee Application - Jacque James
2. Draft Resolution
3. Ordinance 13-20

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Mike Sheffield

**City of Bonita Springs
Advisory Committee Application**

(PLEASE TYPE OR PRINT)

PLEASE BE ADVISED THAT ALL INFORMATION CONTAINED IN THIS APPLICATION BECOMES PUBLIC RECORD ONCE SUBMITTED.

Note: Applications will be kept on file and active for a period of two years from date received.

City Council District # 5
DATE: 1/15/2024

Please Complete All Sections		
NAME: <u>JAMES</u>	<u>JACQUE</u>	<u>E</u>
Last	First	Middle Initial
RESIDENCE ADDRESS:		
<u>27050 MDRA RD</u>	<u>BONITA SPRINGS</u>	<u>34135</u>
Street	City	Zip Code
BUSINESS ADDRESS: <u>(SAME AS HOME)</u>		
Street	City	Zip Code
MAILING ADDRESS: <u>(SAME AS HOME)</u>		
Street	City	Zip Code
PHONE NO. <u>239-877-4552</u>	CELL PHONE # <u>SAME</u>	
Home	Business	
E-MAIL ADDRESS: <u>JACQUEJAMES50@gmail.com</u>		
FAX:		

I hereby submit my name for consideration to serve in an advisory capacity to the City of Bonita Springs on the following Advisory Committee:

HISTORIC PRESERVATION BOARD
NAME OF ADVISORY COMMITTEES

OCCUPATION: INTERIOR DESIGNER

CIVIC/PROFESSIONAL ACCOMPLISHMENTS/OFFICES HELD:
VP BONITA SPRINGS HISTORICAL SOCIETY
(CURRENTLY)

Do you reside in Bonita Springs?

☒ Yes
☐ No

APPLICATION TO SERVE ON A
CITY OF BONITA SPRINGS ADVISORY COMMITTEE – CONTINUED

My qualifications to be eligible are as follows:

27 YEARS AS AN INTERIOR DESIGNER AND
AN ARCHITECTURE FIRM FOR 10 YEARS OUT WEST.
WE SPECIALIZED IN HISTORIC RECONSTRUCTION
OF HOMESTEAD CABINS.

If applicable, please indicate any employment, contractual relationship or status that you may have, or have had within the past 12 months, with any private business entity that rents, leases or sells any realty, or provides any goods or services to the City or that is conducting any business with the City.

NONE

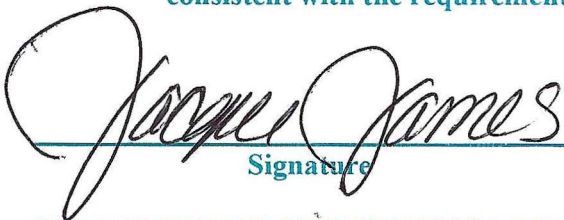
If you have previously served on a City of Bonita Springs Advisory Committee or are currently serving and seeking reappointment, please indicate the number and general nature of any voting conflict disclosure memorandum filed (Form 8B) while serving on the committee:

N/A

If applicable, attach a résumé of additional personal and professional qualifications and experience that pertains to the above.

I understand that:

- 1.) Some of the Boards and Committees appointed by the City Council are required to comply with Chapter 112, Florida Statutes, the Financial Disclosure Law and you may be required to file a Form 1 Financial Disclosure.
- 2.) City of Bonita Springs, an equal opportunity/affirmative action employer, considers the selection and appointment of persons to advisory committees in a non-discriminatory manner consistent with the requirements of Federal, State and Local non-discrimination laws.


Signature


Date

PLEASE SUBMIT THIS FORM VIA EMAIL TO:

OR

RETURN THIS COMPLETED FORM TO:

CLERK@CITYOFBONITASPRINGS.ORG

City of Bonita Springs
City Clerk's Office
9101 Bonita Beach Road
Bonita Springs, FL 34135

CITY OF BONITA SPRINGS

Committee ID# _____
(Office Use Only)

The City of Bonita Springs complies with Local State and Federal laws, regulations and guidelines that prohibit discrimination based on race, sex, color, national origin, handicap, age or marital status

STATUTORILY CREATED REQUIRED COMMITTEE REPORTING DATA

The City of Bonita Springs is required by the State of Florida to collect and maintain the information requested below for statistical reporting purposes only. This information will be maintained separately from your application and will not be considered in the application evaluation process.

The information provided is required by State Statute, however, you have the right not to disclose any or all of this information. This form must be returned to the City of Bonita Springs.

Gender:	☐ Male	☒ Female	☐ Choose Not to Disclose
Handicapped/Disabled	☐ Yes	☒ No	☐ Choose Not to Disclose

If you wish to request special assistance or accommodations, please contact the City Clerk at 239-949-6262 or specify here:

+++++
RACIAL/ETHNIC DATA (CHECK ONE)

- ☒ **WHITE: (Not of Hispanic Origin):** All persons having origins in any of the original people of Europe, North Africa or the Middle East.
- ☐ **BLACK: (Not of Hispanic Origin):** All persons having origins in any of the Black racial groups of Africa.
- ☐ **ASIAN OR PACIFIC ISLANDER:** All persons having origins in any of the original Peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes, for example: China, Japan, Korea, the Philippine Islands and Samoa.
- ☐ **AMERICAN INDIAN OR ALASKAN NATIVE:** All persons having origins in any of the original Peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
- ☐ **HISPANIC:** All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.
- ☐ **CHOOSE NOT TO DISCLOSE**

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION 24 –

A RESOLUTION OF THE CITY OF BONITA SPRINGS APPOINTING ONE MEMBER TO THE CITY OF BONITA SPRINGS HISTORIC PRESERVATION BOARD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs, Florida adopted Ordinance 06-08, amended by Ordinance 09-02 and Ordinance No. 13-20, establishing the City of Bonita Springs Historic Preservation Board, which shall be composed of seven members, five of whom shall be residents of the City; and

WHEREAS, there are two vacancies on the Historic Preservation Board for which the City has one qualified applicant obtained in accordance with Administrative Code AC-1-6 establishing procedure for obtaining appointees for various City advisory boards;

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

1. Jacque James is hereby appointed to the City of Bonita Springs Historic Preservation Board for a term to expire on December 31, 2024:
2. This Resolution shall become effective immediately upon its adoption by City Council.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 3rd day of April 2024.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Bogacz	Steinmeyer
Purdon	Fullick
Carr	Forbes
Corrie	

Date filed with City Clerk: _____

CITY OF BONITA SPRINGS, FLORIDA
ORDINANCE NO. 13 – 20

AN ORDINANCE RESTATING AND AMENDING BONITA SPRINGS ORDINANCE NO. 09-02, AMENDING CHAPTER FIVE OF THE LAND DEVELOPMENT CODE, RELATING TO THE HISTORIC PRESERVATION BOARD; PROVIDING A DEFINITION FOR FLORIDA MASTER SITE FILE; DISCONTINUING FINANCIAL DISCLOSURE FILING REQUIREMENTS WITH STATE FOR HISTORIC PRESERVATION BOARD MEMBERS; PROVIDING FOR APPEALS PURSUANT TO LDC, SECTION 4-83; PROVIDING FOR ADMINISTRATIVE APPROVAL ON REQUESTS FOR REGULAR CERTIFICATES OF APPROPRIATENESS; PROVIDING FOR POSTING AS METHOD FOR NOTICE FOR PUBLIC HEARING ON REQUESTS FOR SPECIAL CERTIFICATE OF APPROPRIATENESS; PROVIDING FOR EXTERIOR COLORS FOR DESIGNATED HISTORIC RESOURCES WITHIN OLD 41 OVERLAY; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Bonita Springs City Council adopted Bonita Springs Ordinance No. 02-05 so as to establish its own procedures for Historic Preservation; and

WHEREAS, Bonita Springs Ordinance No. 02-05 established Land Development Code Chapter Sections 22-1 through 22-245, relating to Historic Preservation, where the initial historic preservation board was the Local Planning Agency, with City Council able, by ordinance, to create a different historic preservation board from a board of citizens with appointments, replacements and removal by resolution; and

WHEREAS, under Florida Statutes §163.3174(4), the Local Planning Agency had the general responsibility for the conduct of the comprehensive planning program; and

WHEREAS, the Local Planning Agency voted at its May 25, 2006 meeting for City Council to establish a separate historic preservation board because of its other duties; and

WHEREAS, Bonita Springs Ordinance No. 06-08 amended its Historic Preservation ordinance to renumber in accordance with the new Land Development Code provisions and to establish a separate historic preservation board; and

WHEREAS, Bonita Springs Ordinance No. 09-02 further amended its Historic Preservation ordinance pertaining to the residency requirements and the time for filling of vacancies for members of the historic preservation board, and providing for reporting guidelines and other requirements for obtaining Certified Local Government status pursuant to the Procedures for Approved State and Local Government Historic Preservation Programs, 36 CFR 67.1 (1987) and the National Historic Preservation Act of 1966, as amended, 16 USC 470; and

WHEREAS, City Council finds it necessary to further amend its Historic Preservation ordinance.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: BONITA SPRINGS LAND DEVELOPMENT CODE
CHAPTER SECTIONS 5-1 THROUGH 5-245

The City of Bonita Springs Land Development Code Sections 5-1 through 5-245 are hereby amended by strikethroughs to delete existing text and by underlining new text, as indicated below:

ARTICLE I. IN GENERAL

Sec. 5-1. Purpose of chapter.

- (a) The purpose of this chapter is to identify, evaluate, preserve and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic and general welfare of the public by:
 - (1) Creating a historic preservation board with the power and duty to review historic sites, areas, structures and buildings for possible designation as historic resources.

- (2) Empowering the historic preservation board to determine the historical significance of a designated historic resource.
 - (3) Protecting designated historic resources by requiring the issuance of certificates of appropriateness and certificates to dig before allowing alterations to those resources.
 - (4) Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices.
 - (5) Stabilizing and improving property values through the revitalization of older residential and commercial neighborhoods.
 - (6) Enhancing the city's attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities.
 - (7) Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage.
 - (8) Promoting the sensitive use of historic and archaeological sites, resources and districts for the education, pleasure and welfare of the people of the City of Bonita Springs.
- (b) The further purpose of this chapter is to obtain and maintain Certified Local Government status pursuant to the Procedures for Approved State and Local Government Historic Preservation Programs, 36 CFR 67 (1987) and the National Historic Preservation Act of 1966, as amended, 16 USC 470.

Sec. 5-2. Applicability of chapter.

- (a) This chapter shall govern and be applicable to all property located in the City of Bonita Springs.
- (b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

Sec. 5-3. Definitions.

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

Archaeological site means an individual historic resource recognized for its prehistoric or historic artifacts and features.

Archaeologist means a person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments or excavations, or is recognized as qualified to perform those tasks by the city.

Area of archaeological sensitivity means an area identified in the survey entitled "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc., 1987), as known or being likely to yield information on the history and prehistory of the county based on prehistoric settlement patterns and existing topographical features. Areas of archaeological sensitivity are divided into the following categories:

- (1) Sensitivity Level 1: Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for listing on the National Register of Historic Places or local historic resource designation.
- (2) Sensitivity Level 2: Those areas containing known archaeological sites that have not been assessed for significance but are likely to conform to the criteria for local designation, or areas where there is a high likelihood that unrecorded sites of potential significance are present.

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons or property of any kind, excluding animal cages.

Building official means the officer charged with the administration and enforcement of the city construction code as set out in Chapter 6, Article II.

Certificate of appropriateness means a written authorization by the historic preservation board or city staff to the owners of a designated property or any building, structure or site within a designated historic district, allowing a proposed alteration, relocation, or the demolition of a building, structure or site. Certificates of appropriateness are divided into the following two classes:

- (1) Regular certificate of appropriateness means a certificate of appropriateness issued by the city staff allowing activities which require the issuance of a building permit but which are classified as ordinary maintenance and repair under the provisions of this chapter and the criteria listed in the U.S. Secretary of the Interior's Standard for Rehabilitation, 36 CFR 67.
- (2) Special certificate of appropriateness means a certificate of appropriateness issued directly by the historic preservation board and required for any proposed work that will result in the alteration, demolition, relocation, reconstruction, new construction or excavation of a designated historic resource, based upon the criteria listed in the U.S. Secretary of the Interior's Standard for Rehabilitation, 36 CFR 67.

Certificate to dig means a certificate issued by the city staff or the historic preservation board, authorizing certain clearing, digging, archaeological investigation or archaeological development projects that may involve the exploration of established documented or suspected archaeological sites in areas of archaeological sensitivity level

1 or 2.

Certified local government means a designated local government meeting the requirements of the National Historic Preservation Act of 1966, as amended, 16 USC 470, which extends some aspects of the federal and state responsibilities for historic preservation to qualified local governments. Under the program, local governments are certified to review and make recommendations to the Florida National Register Review Board concerning nominations to the National Register of Historic Places of properties located within the confines of their local jurisdictions.

Contributing property means any building, structure or site which contributes to the overall historic significance of a designated historic district and was present during the period of historic significance and possesses historic integrity reflecting the character of that time or is capable of yielding important information about the historically significant period or independently meets the criteria for designation as a historic resource.

Demolition means the complete removal of a building or structure, or portions thereof, from a site.

Demolition by neglect means the willful abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

Designation certificate means a certificate issued by the historic preservation board declaring a building, structure, site or district to be a historic resource.

Designation report means a written document indicating the basis for the findings of the historic preservation board concerning the proposed designation of a historic resource pursuant to this chapter.

Exterior means all outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

Florida Master Site File shall mean the central inventory of historic properties established and maintained for the State of Florida, consisting of such properties reported to and recorded with the Division of Historical Resources, pursuant to F.S., Chapter 267, Section 267.031(5)(m), as may be amended, renumbered or replaced.

Historic district means a geographically definable area designated pursuant to this chapter possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also be comprised of individual elements separated geographically but linked by association or history. To qualify as a historic district, an area may contain both contributing and noncontributing properties.

Historic preservation board or board means a board of citizens appointed by the City Council of Bonita Springs to administer the provisions of this chapter.

Historic resource means any prehistoric or historic district, site, building, structure, object or other real or personal property of historical, architectural or archaeological value. Historic resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government or culture of the city, county, the state or the United States.

Historic resource database means the compilation of data gathered on historical

and archaeological sites in the city, based on the findings of the surveys entitled "Historical and Architectural Survey, Lee County" (1986), and "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (1987), and "Historic Resources Survey of Bonita Springs, Final Report" (also known as "The Janus Report")(October, 2004), and any subsequent historic or archaeological survey.

National Register of Historic Places means a federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 USC 470, as such act may be amended, renumbered or replaced, and its implementing regulation, 36 CFR 60, "National Register of Historic Places," as such regulations may be amended, renumbered or replaced.

Noncontributing property means any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances or other changes and therefore no longer possesses historic integrity, or was not present during the period of historic significance or is incapable of yielding important information about that period.

Ordinary maintenance and repairs means work done to prevent deterioration, decay or damage to a building or structure, or any part thereof, by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner means those individuals, partnerships, corporations or public agencies holding fee simple title to real property. The term "owner" does not include individuals, partnerships, corporations or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

Staff means the city staff persons, including persons within the City of Bonita Springs Community Development Department, designated by the City Manager to serve as staff for the historic preservation board and to administer the provisions of this chapter in cooperation with the building official and the zoning director.

Structure means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

Undue economic hardship means an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a special certificate of appropriateness for demolition, thereby amounting to the taking of the owner's property without just compensation.

Zoning director means the director of the zoning and development review division, or his successor or designee as the person responsible for administering the provisions of chapter 34 4.

Sec. 5-4. Penalty for violation of chapter.

- (a) Any person, or any agent or representative thereof, who violates any provision of this chapter shall, upon conviction, be subject to the following penalties:

- (1) Criminal penalties. Such person shall be punished as provided in section 1-5.
- (2) Civil penalties. The following shall be applicable:
 - a. Injunctive relief to enjoin and restrain any person from violating the provisions of this chapter; and
 - b. Revocation, suspension or amendment of any permit granted pursuant to this chapter.

In addition to all other criminal and civil penalties contained in this section, any person applying for a permit after commencing or completing construction of a structure in violation of this chapter shall pay twice the amount of the building permit fee as established by the city administrative codes.

- (b) For purposes of this chapter, each day that a violation continues to exist will be considered a separate violation of this chapter, to which both civil and criminal penalties may apply.

Secs. 5-5--5-40. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 5-41. Stop work orders.

Any work conducted contrary to the provisions of this chapter shall be immediately stopped upon notice from the building official or his designee that the work does not conform to the terms of this chapter. Notice shall be in writing and shall be given to the property owner or his agent, or to the person doing the work. If none of these persons are immediately available on the construction site to receive the required notice, it shall be posted on the property. The notice shall state all conditions under which work may be resumed. In emergencies, the building official shall not be required to furnish written notice of the stop work order.

Sec. 5-42. Appeals.

- (a) Any owner of a building, structure or site affected by the operation of this chapter may appeal a decision of the historic preservation board by filing a written notice of appeal within 15 days of the date the written decision of the historic preservation board was rendered. The notice of appeal shall be filed with the City of Bonita

~~Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") in accordance with the Bonita Springs Land Development Code ("LDC"), section 4-83 and a copy provided to the historic preservation board staff, which shall state the decision being appealed, the grounds for the appeal and a summary of the relief sought.~~

- (b) Appeals shall otherwise be pursued using the procedure set forth in LDC, section ~~4-83 4-145(a)~~, pertaining to appeals from administrative matters, ~~—and in accordance with the city administrative codes adopted to implement the provisions of chapter 4.~~
- (c) Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal a decision rendered under the provisions of this chapter.

Secs. 5-43--5-70. Reserved.

DIVISION 2. HISTORIC PRESERVATION BOARD

Sec. 5-71. Establishment; general authority

There is hereby created a historic preservation board as an agency of the city government in and for the City of Bonita Springs. The historic preservation board is hereby vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological and architectural resources in the city, as prescribed by this chapter, under the direct jurisdiction and control of the City Council of Bonita Springs. The responsibilities of the historic preservation board will complement those of the State Historic Preservation Office.

Sec. 5-72. Membership; compensation of members; removal of members.

- (a) The historic preservation board shall consist of the seven members appointed by City Council, at least five of whom shall be residents of the City. The remaining members need not be residents of the City. Appointments of all of the members of the historic preservation board shall be made on the basis of a potential member's civic pride, involvement in community issues, integrity, experience and interest in the field of historic preservation. If possible, one member of the historic preservation board shall be an architect registered to practice in the state. City Council of Bonita Springs shall strive to appoint one member of the historic preservation board from each of the following categories:
 - (1) History or archaeology.
 - (2) Real estate land development or finance.
 - (3) Law or urban planning.
 - (4) Engineering, architecture, building construction or landscape architecture.
 - (5) In the event a matter requires evaluation by a profession not represented

on the historic preservation board, such board may seek out such expertise.

~~All members of the historic preservation board must comply with the financial disclosure laws of the state.~~

- (b) Members shall serve overlapping terms of three years. Initially, two members shall be appointed to one-year terms, two members shall be appointed to two-year terms, and three members shall be appointed to full three-year terms. After the initial appointments, all appointments shall be made for three years. A member of the historic preservation board shall be eligible for reappointment. Members of the historic preservation board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by Bonita Springs City Council. Prior to the expiration of his term, a member of the historic preservation board may be removed from office only by a majority vote of the entire membership of the City Council. If, however, a member of the historic preservation board fails to attend three consecutive meetings, or four meetings in any one calendar year, the chairman shall certify such fact to the City Council. Upon such certification, that member shall be deemed to have been removed from the historic preservation board and the City Council shall fill the vacancy, within sixty (60) days, by appointment in accordance with its administrative code for advisory boards.

Sec. 5-73. Organization; meetings.

The Mayor shall appoint the Chairman and the historic preservation board shall elect a Vice-Chairman from among its membership. The chairman shall preside at all meetings and shall have the right to vote. The vice-chairman shall preside in the absence of the chairman. The city shall provide adequate staff to allow the historic preservation board to perform its duties. Staff shall consist of at least one historic preservation planner, and one clerical person, who shall be responsible for recording and transcribing the minutes of all meetings of the historic preservation board. The city attorney shall be present at all historic preservation board meetings to represent the city, except that such presence shall not be necessary when the historic preservation board is discussing matters that would not impact individual property rights. All meetings of the historic preservation board shall be open to the public. A public record of the minutes and resolutions of the historic preservation board shall be maintained and made available for inspection by the public. The historic preservation board shall meet at least once per month, at a date and time to be decided by the historic preservation board, unless there is no business pending before the historic preservation board. Meetings shall be announced publicly, and the agenda for each meeting shall be previously published. Decisions of the historic preservation board shall be delivered in a public forum. All rules of procedure for the historic preservation board shall be available for inspection by the public. Regardless of the lack of pending business, the historic preservation board shall meet at least four times during any calendar year.

Sec. 5-74. Powers and duties.

The historic preservation board shall have the following powers and duties:

- (1) To propose rules and procedures to implement the provisions of this chapter to Bonita Springs City Council.
- (2) To maintain and update the findings of the historical and archaeological surveys, inventory materials and validate those findings.
- (3) To evaluate the significance and eligibility of historic resources for designation pursuant to this chapter.
- (4) To designate eligible historic resources pursuant to this chapter.
- (5) To nominate historic resources to the National Register of Historic Places.
- (6) To approve, deny or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.
- (7) To issue designation certificates, place historical markers and administer other programs aimed at the proper recognition of designated historic resources.
- (8) To advise the Bonita Springs City Council on all matters related to historic preservation policy, including use, administration and maintenance of city -owned designated sites and districts.
- (9) To recommend zoning and building code amendments to the Bonita Springs City Council to assist in the preservation of designated historic resources or districts.
- (10) To review and make recommendations to the Bonita Springs City Council on proposed amendments to the comprehensive plan or land development regulations that may affect designated historic resources and districts or buildings, structures, districts or sites eligible for designation.
- (11) To propose and recommend to the Bonita Springs City Council financial and technical incentive programs to further the objectives of historic preservation.
- (12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.
- (13) To record and maintain records of the actions and decisions of the historic preservation board.
- (14) To apply for, in the name of the city only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
- (15) Upon designation as a certified local government, to review and make recommendations concerning National Register of Historic Places nomination proposals to the Florida Review Board.
- (16) To perform any other function or duty assigned to it by the Bonita Springs City Council.
- (17) To attend informational or educational meetings, workshops and/or conferences.

- (18) To maintain a detailed inventory of designated districts, sites and structures compatible with the Florida Master State Site File. Such inventory materials shall be open to the public.

Sec. 5-75. Rules and regulations.

Bonita Springs City Council shall develop and propose such rules and regulations as are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this chapter. Such rules and regulations shall conform to the provisions of this chapter and shall govern and control the procedures, hearings and actions of the historic preservation board. No such rules and regulations shall become effective until the proposed rules and regulations, and any amendments or modifications thereto, have been approved by the Bonita Springs City Council as a city administrative code policy.

Sec. 5-76. State Historic Preservation Office Reporting Guidelines.

The historic preservation board shall provide the State Historic Preservation Officer with the following:

- (1) Thirty (30) calendar days prior notice of all meetings.
- (2) Minutes of each meeting within thirty (30) calendar days after such meeting.
- (3) A record of the attendance of the members of the historic preservation board within thirty (30) calendar days of each meeting.
- (4) Public attendance figures for each meeting within thirty (30) calendar days of such meeting.
- (5) Notification of change in membership of the historic preservation board within thirty (30) calendar days of action.
- (6) Notification of all new historic designations or alterations of existing designations.
- (7) Amendments to the ordinance for review and comment at least thirty (30) calendar days prior to adoption.
- (8) An annual report by November 1st of each year, covering the activities of the previous October 1st through September 30th.
- (9) Information to be included in the annual report shall, at a minimum, contain:
 - a. A copy of the rules of procedure.
 - b. A copy of the historic preservation ordinance.
 - c. Resumes of historic preservation board members.
 - d. Changes of members in the historic preservation board.
 - e. New local designations.
 - f. New National Register listings.
 - g. Review of surveys and inventory activity with a description of the system used.
 - h. Program report on each grant-assisted activity.
 - i. Number of projects reviewed.

Secs. 5-77 –5-100. Reserved.

DIVISION 3. CERTIFICATE OF APPROPRIATENESS

Sec. 5-101. Required.

No building, moving or demolition permit shall be issued for a designated historic resource, or a building, structure or site which is part of a designated historic or archaeological district, until a certificate of appropriateness has been issued. Except for applications requesting certificates of appropriateness for noncontributing properties, the criteria for issuance of a certificate of appropriateness (regular or special) shall be the U.S. Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67 (1983), as such standards may be amended, renumbered or replaced, which are hereby adopted by reference as though set forth fully in this article. Applications for certificates of appropriateness for noncontributing properties shall be reviewed using the specific criteria set out in the resolution designating the historic district where the property is located.

Sec. 5-102. Regular certificate of appropriateness.

- (a) A regular certificate of appropriateness shall be required for work requiring a building permit and classified as ordinary maintenance and repair by this chapter, or for any work that will result, to the satisfaction of the city staff, in the close resemblance in appearance of the building, architectural feature or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.
- (b) The historic preservation board staff shall, administratively, within five working days from the date that a complete application has been filed with the Bonita Springs Community Development Department, approve, deny, or approve with conditions, an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a property within a designated historic district. No hearing before the historic preservation board shall be required. The written findings of the staff shall be mailed by ~~certified mail, return receipt requested,~~ first class mail to the applicant and to the members of the historic preservation board within two working days of the staff decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the staff decision by applying for a special certificate of appropriateness within 30 calendar days of the date that the decision is issued.

Sec. 5-103. Special certificate of appropriateness.

- (a) Required. A special certificate of appropriateness shall be issued by the historic preservation board prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation or new construction which will result in a change to the original appearance of a designated historic resource or a contributing property within a designated historic district. A special certificate of appropriateness is also required prior to any new construction, reconstruction or alteration of a noncontributing property within a designated historic district. A special certificate of appropriateness may also be issued to reverse or modify a staff decision regarding an application for a regular certificate of appropriateness or a conditional certificate to dig.
- (b) Application. An applicant for a special certificate of appropriateness shall submit an application to the ~~historic preservation board~~ Bonita Springs Community Development Department, accompanied by two (2) sets of full plans and specifications, a site plan and, in the case of sites involving buildings or structures, samples of materials as may be deemed appropriate and requested by the historic preservation board to fully describe the proposed appearance, color, texture, materials or design of the building or structure and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage or exterior lighting. The applicant shall provide adequate information to enable the historic preservation board to visualize the effect of the proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district. Alterations shall achieve the purpose of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings.
- (c) Public hearing. The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owners by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation posting a copy of such notice at the premises, at City Hall, and upon the city's website or other electronic media at least five calendar days but not sooner than 20 calendar days prior to the date of hearing.
- (d) Action of historic preservation board. The historic preservation board shall meet and act upon an application for a special certificate of appropriateness on or within 70 calendar days from the date the application and materials adequately describing the proposed action are received. The historic preservation board shall approve, deny or approve the special certificate of appropriateness with conditions, subject to the acceptance of the conditions by the applicant, or suspend action on the application for a period not to exceed 35 calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the historic preservation board to act upon an application on or within 70 calendar days (if no additional information is required) or 105 calendar days (if additional information is required by the historic preservation board) from the date the application was received shall result in the

immediate issuance of the special certificate of appropriateness applied for, without further action by the historic preservation board.

- (e) Notice of decision. All decisions of the historic preservation board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the special certificate of appropriateness issued by the historic preservation board or the board's designated staff representative. Notice of a decision shall be given to the applicant and to the building official, the zoning director and any other appropriate public agency, as determined by the historic preservation board. When an application is denied, the notice of the historic preservation board shall provide an adequate written explanation of its decision to deny the application. The historic preservation board shall keep a record of its actions under this chapter. Any appeal may be pursued using the procedure set forth in LDC, section 4-83, pertaining to appeals from administrative matters.

Sec. 5-104. Demolition of a Designated Historic Resource or a Contributing Property.

- (a) Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition.
- (b) Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to article III of this chapter. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. The historic preservation board may make recommendations and suggestions to the governmental agency and the owner relative to the feasibility of and the public interest in preserving the designated resource.
- (c) No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner thereof until an application for a special certificate of appropriateness has been submitted to the historic preservation board and approved pursuant to the procedures in this article. The historic preservation board shall approve, deny or approve with conditions the application for a special certificate of appropriateness for demolition. Refusal by the historic preservation board to grant a special certificate of appropriateness for demolition shall be evidenced by a written order detailing the public interest that is sought to be preserved. The historic preservation board may grant a special certificate of appropriateness for demolition, which may provide for a delayed

effective date of six months to allow the historic preservation board to seek possible alternatives to demolition. During the demolition delay period the historic preservation board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purpose of this chapter. Such steps may include but shall not be limited to consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving the building or other feature.

- (d) The historic preservation board shall consider the following criteria in evaluating applications for certificates of appropriateness for demolition of designated historic resources or contributing properties within a designated historic district:
 - (1) Is the building or structure of such interest or quality that it would reasonably meet national, state or local criteria for additional designation as a historic or architectural landmark?
 - (2) Is the building or structure of such design, craftsmanship or material that it could be reproduced only with great difficulty or expense?
 - (3) Is the building or structure one of the last remaining examples of its kind in the neighborhood, the city or the region?
 - (4) Does the building or structure contribute significantly to the historic character of a designated historic district?
 - (5) Would retention of the building or structure promote the general welfare of the city by providing an opportunity for the study of local history or prehistory, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage?
 - (6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?
 - (7) Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?
- (e) Unless demolition has been ordered by a court of competent jurisdiction, or another governmental body, the Fire Marshal or the Building Official, a special certificate of appropriateness for demolition of a designated building or structure shall not be issued until there are definite plans for reuse of the property and a building permit or development order for the new construction has been applied for.
- (f) If an undue economic hardship is claimed by the property owner as a result of the denial of a special certificate of appropriateness for demolition, the historic preservation board shall have the power to vary or modify adherence to its original decision no later than 35 calendar days from the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner and a subsequent finding by the historic

preservation board that retention of the building or structure would deny the owner of all economically viable use of the property, thus creating an undue economic hardship. The owner may present the following evidence as grounds for such a finding:

- (1) For all property, the owner may present:
 - a. The amount paid for the property, the date of purchase and the party from whom purchased;
 - b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
 - c. The amount of real estate taxes for the previous two years;
 - d. The annual debt service, if any for the previous two years;
 - e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;
 - f. Any listings of the property for sale or lease, the price asked and offers received, if any; and
 - g. Any profitable adaptive uses for the property which have been considered by the owner.
- (2) In addition to the items set forth in subsection (f)(1) of this section, the owner may present, for income-producing property:
 - a. The annual gross income from the property for the previous two years;
 - b. Itemized operating and maintenance expenses for the previous two years; and
 - c. The annual cash flow, if any, for the previous two years.

Sec. 5-105. Moving permits.

The historic preservation board shall consider the following criteria for applications for special certificates of appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

- (1) The historic character and aesthetic interest the building or structure contributes to its present setting.
- (2) The reasons for the proposed move.
- (3) The proposed new setting and the general environment of the proposed new setting.
- (4) Whether the building or structure can be moved without significant damage to its physical integrity.
- (5) Whether the proposed relocation site is compatible with the historical and architectural character of the building or structure.
- (6) When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

Sec. 5-106. Archaeological sites and districts.

- (a) Designation. The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (Piper Archaeological Research, Inc., 1987) and "Historic Resources Survey of Bonita Springs, Final Report" (also known as "The Janus Report") (October, 2004), shall be used as the initial database when considering the designation of areas of archaeological sensitivity level 1.
- (b) Certificate of appropriateness. A certificate of appropriateness shall be required prior to the issuance of a building permit for activity within an archaeological site or district designated pursuant to this chapter. An application for a certificate of appropriateness shall be accompanied by two (2) sets of full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.
 - (1) The requirements outlined in article III of this chapter shall apply to all applications and the issuance of all certificates of appropriateness for archaeological sites and districts designated pursuant to this chapter.
 - (2) In reviewing the application for a special certificate of appropriateness for a designated archaeological site, the historic preservation board may also require any or all of the following:
 - a. Scientific excavation and evaluation of the site by an archaeologist at the owner's expense.
 - b. An archaeological survey, conducted by an archaeologist, containing an analysis of the impact of the proposed activity on the archaeological site.
 - c. Proposal for mitigation measures.
 - d. Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in article III, division 2, of this chapter.
 - (3) To knowingly disturb human burial remains is a third degree felony in the state, pursuant to F.S. ch. 872, pertaining to offenses concerning dead bodies and graves. The law includes prehistoric as well as historic period interments, and aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in F.S. ch. 872. If unmarked human burials are suspected or known in an area under consideration for any certificate of appropriateness, the area shall be surveyed by a professional archaeologist to locate such remains. Procedures for dealing with human remains shall be carried out according to F.S. ch. 872. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community or ethnic relationship with the deceased in order to arrange for their appropriate reinterment or disposition.

- (c) Certificate to dig. The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" and "Historic Resources Survey of Bonita Springs, Final Report" (also known as "The Janus Report") (October, 2004), shall be used to identify areas of archaeological sensitivity levels 1 and 2.
- (1) A certificate to dig shall be required prior to or in conjunction with the issuance of a final development order for activity within any area recorded on the Florida Master Site File or of archaeological sensitivity levels 1 and 2 that may involve new construction, filling, digging, removal of trees or any other activity that may alter or reveal an interred archaeological site. If submerged or wetland areas, such as ponds, sloughs or swamps, are also to be damaged by development or by dredge and fill activities, these shall also be assessed for their potential to contain significant archaeological sites.
 - (2) The purpose of a certificate to dig shall be to allow sufficient time to conduct any necessary investigations, including the location, evaluation and protection of significant archaeological sites in areas suspected of having such archaeological sites.
 - (3) The staff of the historic preservation board shall, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. Staff's decision shall be based on the application and any other guidelines which the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate shall specify a period of time during which excavation shall occur, not to exceed 60 days unless the owner agrees to an extension. The owner shall have an archaeologist conduct excavations as necessary during this period. The certificate to dig and any staff findings shall be mailed to the applicant by certified mail, return receipt requested, within seven calendar days of its review and approval. Copies of the certificate to dig shall also be provided to the historic preservation board members.
 - (4) The applicant shall have the opportunity to appeal any conditions attached to a certificate to dig by applying for a special certificate of appropriateness within 30 calendar days of the date the conditional certificate to dig is issued. The historic preservation board shall convene no later than 50 calendar days after the date a completed application for a special certificate of appropriateness is filed with the staff. Approved certificates to dig shall contain an effective date not to exceed 60 calendar days, at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to article III of this

chapter.

- (5) All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the appropriate city agencies and the staff of the historic preservation board to inspect work for compliance with such certificate. In the event of noncompliance the appropriate ~~county~~ city staff shall have the power to issue a stop work order and all work shall cease.

Secs. 5-107 - 5-140. Reserved.

ARTICLE III. DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES

DIVISION 1. GENERALLY

Secs. 5-141—5-170. Reserved.

DIVISION 2. INCENTIVES

Sec. 5-171. Financial assistance.

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation projects by the city, county, the state or the federal government, provided they meet any additional requirements of those financial assistance programs. The historic preservation board and its staff shall investigate funding sources and make recommendations to the Bonita Springs City Council to establish a program providing for transfer of development rights, easements and other local financial assistance programs whenever possible.

Sec. 5-172. Nomination to National Register of Historic Places.

The historic preservation board shall encourage and assist in the nomination of eligible income-producing properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register of Historic Places. If a property owner objects to a nomination to the National Register, this objection shall be notarized.

Sec. 5-173. Relief from building regulations.

Designated historic resources and contributing properties to a designated historic district may be eligible for administrative variances or other forms of relief from applicable

building and zoning codes as follows: Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to the technical requirements of the ~~Standard Florida~~ Building Code when the proposed work has been approved by a regular or special certificate of appropriateness and also by the building official, pursuant to the authority granted to the building official by other ordinances or statutes, provided that:

- (1) The restored building will be no more hazardous based on considerations of life, fire, sanitation and safety than it was in its original condition.
- (2) Plans and specifications are sealed by a Florida registered architect or engineer, if required by the building official.
- (3) The building official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety and welfare.

Sec. 5-174. Relief from zoning regulations.

The zoning director may, by written administrative decision, approve any relief request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements and other similar zoning relief not related to a change in use of the property in question.

- (1) Before granting relief, the zoning director must find that:
 - a. The relief will be in harmony with the general appearance and character of the community.
 - b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
 - c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.
- (2) In granting any relief, the zoning director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:
 - a. Landscape materials, walls and fences as required buffering.
 - b. Modifications of the orientation of any openings.
 - c. Modifications of site arrangements.

The owner of a building, structure or site affected by the operation of this chapter and the decision of the zoning director may appeal that decision according to the provisions of chapter ~~34~~ 4.

Sec. 5-175. Variances from floodplain management regulations.

Variances from the floodplain management regulations may be requested

pursuant to the terms of chapter ~~6-7~~, ~~article IV~~.

Secs. 5-176--5-200. Reserved.

DIVISION 3. PROCEDURE

Sec. 5-201. Initiation of designation process.

The designation process under this chapter may be initiated by a written petition from the property owner. The historic resource database shall be used to identify buildings, structures and sites potentially eligible for historic designation.

Designation proposed by owner. When designation is requested by the owner, a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the property and to aid in the preparation of a designation report. The historic preservation board shall, based on the request and information presented, either direct the owner or staff to begin or assist in preparation of a designation report, accept and direct the filing of a designation report prepared by the owner or staff, reject a report submitted for filing, or deny the designation petition. Upon the filing of a designation report, the historic preservation board may direct staff to commence the designation and notice process.

Sec. 5-202. Designation report.

Prior to the designation of any historic resource or historic district pursuant to this chapter, a designation report shall be filed with the historic preservation board. The designation report shall contain the following information:

- (1) For individual historic or archaeological buildings, structures or sites:
 - a. A physical description of the building, structure or site and its character-defining features, accompanied by photographs.
 - b. A statement of the historical, cultural, architectural, archaeological or other significance of the building, structure or site as defined by the criteria for designation established by this chapter.
 - c. A description of the existing condition of the building, structure or site, including any potential threats or other circumstances that may affect the integrity of the building, structure or site.
 - d. A statement of rehabilitative or adaptive use proposals.
 - e. A location map, showing relevant zoning and land use information.

- f. Staff recommendations concerning the eligibility of the building, structure or site for designation pursuant to this chapter, and a listing of those features of the building's structure or site which require specific historic preservation treatments.
- (2) For historic or archaeological districts:
- a. A physical description of the district, accompanied by photographs of buildings, structures or sites within the district indicating examples of contributing and noncontributing properties within the district; also, a list of all contributing properties outside the proposed boundaries of the district.
 - b. A description of typical architectural styles, character-defining features and types of buildings, structures or sites within the district.
 - c. An identification of all buildings, structures and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
 - d. A statement of the historical, cultural, architectural, archaeological or other significance of the district as defined by the criteria for designation established by this chapter.
 - e. A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
 - f. A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation or new construction within the boundaries of the district.

Sec. 5-203. Required notices; action by historic preservation board.

The historic preservation board will hold timely public hearings on every petition for designation made pursuant to this chapter. References in this chapter to calendar days will include Saturdays, Sundays and legal holidays. References in this chapter to working days excludes Saturdays, Sundays and legal holidays.

- (1) Notice to owner. The historic preservation board shall notify the property owners of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. Notice shall be sent by certified mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the city staff shall furnish the owners with copies of the designation report and this chapter. City staff shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions and address areas of concern prior to the public hearing.
- (2) Notification of public hearing. For each proposed designation pursuant to this chapter, the historic preservation board shall hold a public hearing no

sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice of the intent to designate sent to the owners. Notice of the public hearing shall be published in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of the public hearing.

- (3) Decision deadlines. Within 14 calendar days after the date of the public hearing, the historic preservation board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this chapter. The rendering of a decision by the historic preservation board shall constitute final administrative action. The historic preservation board shall notify the following parties of its actions and shall attach a copy of the resolution:
 - a. The owner of the affected property.
 - b. The building official.
 - c. The zoning director.
 - d. The city clerk.
 - e. The planning division.
 - f. The Public Works Manager.
 - g. The county property appraiser.
 - h. Any other county, municipal, state or federal agency, including agencies with demolition powers that may be affected by the decision of the historic preservation board.
- (4) Recording of designation. All resolutions designating historic resources shall be recorded in the public records of the county within 25 calendar days of the date the historic preservation board renders its decision, unless an appeal of that decision has been filed within the time limits established by this chapter.
- (5) Suspension of activities. Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation or excavation on the subject property until final administrative action occurs or the expiration of 75 calendar days from the date the designation report is filed with the historic preservation board, whichever occurs first, unless an appeal of the decision of the historic preservation board is filed. If an appeal is filed as provided in this chapter, the suspension of activities will continue in effect for an additional 35 calendar days from the date the historic preservation board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner may waive the suspension of activities deadlines set out in this section. Waivers must be in the form of a notarized statement to the historic preservation board for inclusion in the board's files. The historic preservation board will notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities expires after 60 days if no public hearing is held

Sec. 5-204. Criteria for designation.

- (a) The historic preservation board shall have the authority to designate historic resources based upon their significance in the city's history, architecture, archaeology or culture, or for their integrity of location, design, setting, materials, workmanship or associations, and because they:
 - (1) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric or architectural history that have contributed to the pattern of history in the community, the city, southwestern Florida, the state or the nation;
 - (2) Are associated with the lives of persons significant in our past;
 - (3) Embody the distinctive characteristics of a type, period, style or method of construction or are the work of a master; or possess high artistic value or represent a distinguishable entity whose components may lack individual distinction;
 - (4) Have yielded or are likely to yield information on history or prehistory; or
 - (5) Are listed or have been determined eligible for listing in the National Register of Historic Places.
- (b) A historic resource shall be deemed to have historical or cultural significance if it is:
 - (1) Associated with the life or activities of a person of importance in local, state or national history;
 - (2) The site of a historic event with a significant effect upon the city, county, state or nation;
 - (3) Associated in a significant way with a major historic event;
 - (4) Exemplary of the historical, political, cultural, economic or social trends of the community in history; or
 - (5) Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.
- (c) A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:
 - (1) Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
 - (2) Embodies the characteristics of an architectural style, period or method of construction;
 - (3) Is a historic or outstanding work of a prominent architect, designer or landscape architect; or
 - (4) Contains elements of design, detail, material or craftsmanship, which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response to the South Florida environment.
- (d) A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:
 - (1) There is an important historical event or person associated with the site;
 - (2) The quality of the site or the data recoverable from the site is significant

- enough that it would provide unique or representative information on prehistoric or historical events;
- (3) The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc.;
 - (4) The site was the location of historic or prehistoric activities during a particular period of time; or
 - (5) The site maintains a sufficient degree of environmental integrity to provide useful archaeological data. Such integrity shall be defined as follows:
 - a. The site is intact and has had little or no subsurface disturbance; or
 - b. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.
- (e) Properties not generally considered eligible for designation include cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than 50 years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria described in this section or if they fall within one or more of the following categories:
- (1) A religious property deriving primary significance from architectural or artistic distinction of historical importance.
 - (2) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person.
 - (3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life.
 - (4) A cemetery, which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
 - (5) A property primarily commemorative in nature if design, age, tradition or symbolic value has invested it with its own historical significance.
 - (6) A building, structure, site or district achieving significance less than 50 years from the date it is proposed for designation if it is of exceptional historical importance.

Secs. 5-205--5-240. Reserved.

ARTICLE IV. MAINTENANCE AND REPAIR OF PREMISES

Sec. 5-241. Ordinary maintenance and repair.

Nothing in this chapter shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair do not involve a

change of design, appearance (other than color) or material, and do not require a building permit. Any proposed change to the exterior colors of a designated historic resource, or a contributing property within a designated historic district as may be created and located within the Old 41 Redevelopment overlay, shall conform to the provisions of LDC 4-1154(c)(5), as may be amended, renumbered or replaced, relating to the Old 41 Redevelopment design standards, and shall be reviewed and approved by the city's architect in accordance with any designated color palette adopted by City Council.

Sec. 5-242. Correction of deficiencies generally.

When the historic preservation board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the historic preservation board may request appropriate officials or agencies of the city government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws and regulations.

Sec. 5-243. Unsafe structures.

If the building official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of the applicable city ordinances, the building official will immediately notify the historic preservation board by submitting copies of such findings. Where appropriate and in accordance with applicable city ordinances, the historic preservation board shall encourage repair of the building or structure rather than demolition. The building official will, in these instances, take into consideration any comments and recommendations made by the historic preservation board. The historic preservation board may also endeavor to negotiate with the owner and interested parties, provided such actions do not interfere with procedures established in the applicable ordinances.

Sec. 5-244. Emergency work.

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health or property, nothing contained in this chapter will prevent the temporary construction, reconstruction, demolition or other repairs to a historic structure, building or site or a contributing or noncontributing property, structural improvement, landscape feature or archaeological site within a designated historic district. Such temporary construction, reconstruction or demolition must take place pursuant to permission granted by the building official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out. The owner of a building or structure damaged by fire or natural calamity will be permitted to

immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this chapter. The owner may request a special meeting of the historic preservation board to consider an application for a certificate of appropriateness to provide for permanent repairs.

Sec. 5-245. Demolition by neglect.

If the staff of the historic preservation board or the building official inform the historic preservation board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this chapter, the historic preservation board shall notify the owners of record by certified mail of its preliminary findings and intent to hold a public hearing no later than ~~35~~ 45 calendar days from the date the notice was sent to determine evidence of neglect. The owner shall have until the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner to abate the structural, health or safety hazards identified in the initial notice within ~~35~~ 45 calendar days, the historic preservation board shall hold a public hearing to consider recommending to the building official that the owner be issued a citation for code violation. The owner shall have the right to rebut the preliminary findings of the historic preservation board at the public hearing. If the historic preservation board finds that the building or structure is being demolished by neglect pursuant to this chapter, the historic preservation board may recommend to the building official that the owner be issued a citation for code violations and that penalties be instituted pursuant to this chapter.

SECTION TWO: REPEALER

~~Upon the effective date of this Ordinance, Sections 14-71 through 14-79 of the Bonita Springs Land Development Code are hereby repealed and replaced by the provisions of this Ordinance.~~

SECTION THREE-TWO: SEVERABILITY

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any Court of competent jurisdiction shall hold any of the provisions of this Ordinance unconstitutional, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the City Council for the City of Bonita Springs that this Ordinance would be adopted had such unconstitutional provision not been included herein.

SECTION FOUR THREE: CONFLICTS OF LAW

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

SECTION FIVE FOUR: CODIFICATION, INCLUSION IN CODE AND
SCRIVENER'S ERRORS

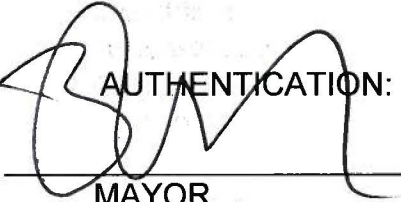
It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

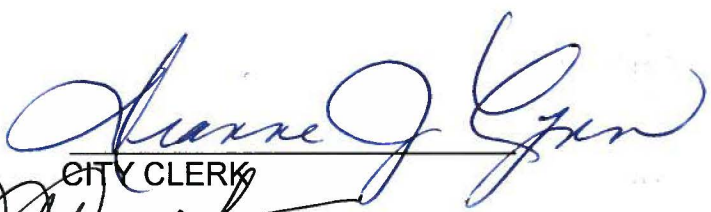
SECTION SIX FIVE: EFFECTIVE DATE

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

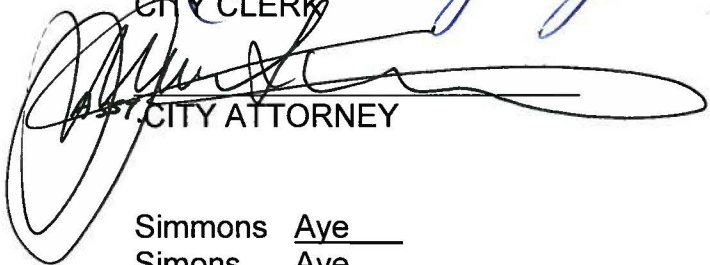
DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 18th day of December, 2013.

AUTHENTICATION:


MAYOR


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

Vote:

Nelson Aye
McIntosh Aye
Martin Aye
Slachta Aye

Simmons Aye
Simons Aye
Lonkart Aye

Date filed with City Clerk: 12-19-13

REQUESTED MOTION: Second reading of an Ordinance of the City of Bonita Springs; Authorizing the Lease of Real Property Known as Everglades Wonder Gardens; and approve Operating Agreement with Bonita Wonders Gardens, Inc.

REQUESTOR: Derek Rooney, City Attorney

AGENDA: City Attorney Items

STRATEGIC PRIORITY: #3 Community Aesthetics

BACKGROUND:

Pursuant the City Charter, Section 27, requires the adoption of an ordinance authorizing the conveyance or lease of city real property in excess of \$15,000 in value.

The proposed draft ordinance has been prepared in support of the proposed public-private partnership operating agreement between the City and Bonita Wonders Gardens, Inc. regarding the old Everglades Wonder Gardens facility in Downtown Bonita.

STAFF RECOMMENDATION:

Adopt draft Ordinance and approve Operating Agreement between the City and Bonita Wonders Gardens, Inc.

ATTACHMENTS:

1. Ordinance
2. Legal Description
3. Everglades Wonder Gardens Public-Private Partnership Operating Agreement

REVIEWERS:

City Manager:	Arleen Hunter
City Attorney:	Derek Rooney
City Clerk:	Michael Sheffield
Department Director:	Nicole Perino

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 2024 - 03

**AN ORDINANCE OF THE CITY OF BONITA SPRINGS;
AUTHORIZING THE LEASE OF REAL PROPERTY KNOWN AS
THE EVERGLADES WONDER GARDENS; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, the Section 27 of the City of Bonita Springs Charter requires the adoption of an ordinance to authorize the conveyance or lease of real property by the City when the value of such property exceeds \$15,000; and

WHEREAS, in April 2015, the non-profit Bonita Wonder Gardens, Inc. ("BWG") purchased the historic attraction Everglades Wonder Gardens ("Gardens"); and,

WHEREAS, later in January 2018, the City took title to the land, and improvements thereon constituting the Gardens, pursuant to a certain Operating Agreement entered into between the City and Operator with an effective January 3, 2018; and,

WHEREAS, following discussions with the BWG, the City and BWG have developed a new partnership arrangement providing for a 10-year initial lease with opportunities to renew for successive terms thereafter; and

WHEREAS, City Council at their April 3, 2024 meeting entered into a comprehensive partnership agreement to lease the property from the City and operate in accordance with mutually agreed terms.

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

SECTION ONE: RECITALS

The forgoing recitals are hereby adopted as legislative findings and incorporated herein as though set forth below.

SECTION TWO: AUTHORIZING CONVEYANCE

City Council of Bonita Springs hereby authorizes the lease of certain real property, described in Exhibit "A" attached hereto for a term, including extensions, not to exceed 10 years and subject to the conditions contained in the Public-Private Partnership Agreement between the City and BWG on April 3, 2024.

SECTION THREE: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 3rd day of April, 2024.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Carr	Corrie
Purdon	Fullick
Forbes	Steinmeyer
Bogacz	

Date filed with City Clerk: _____

EXHIBIT "A"

A property at 27100-180 Old 41 Road and 10450 Baxter Ave, Bonita Springs, Florida 34135, more specifically described as:

Lots 1, 2, 3, 4, 5, and 6 of Block C, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Block B, together with that part of Johnson Avenue lying between Block B and C which has been previously vacated, less the North 10 feet of Lots 4, 5 and 11, Block B, and less that part of Lot 1, in Block B, described as follows: Beginning at the northeast corner of said Lot 1 in Block B, run west along the north line of said lot to the NW corner of said Lot; thence run southerly along the west line of said lot and the east line of the right-of-way of the Fort Myers Southern Railroad for 40 feet; thence run northeasterly to a point on the east line of said line of said Lot 1, ten feet south of the point of beginning; thence run north along the east line of Lot 1 to the point of beginning, all of the foregoing property lying in SPRING GARDENS, according to the map or plat on file in Plat Book 6, at Page 15, of the Public Records of Lee County, Florida.

EVERGLADES WONDER GARDENS

PUBLIC-PRIVATE PARTNERSHIP OPERATING AGREEMENT

This **Public-Private Operating Agreement** (“**Agreement**”) is entered into by and between the City of Bonita Springs, a municipal corporation of the State of Florida (“**City**”) and Bonita Wonder Gardens, Inc., DBA Everglades Wonder Gardens, a nonprofit corporation under the laws of Florida (“**Operator**”), (collectively referred to as “the Parties” and each a “Party”) with an “Effective Date” as of the last date of signature below.

RECITALS

WHEREAS, the Everglades Wonder Gardens is a zoological park and botanical garden serving as a historic roadside attraction since 1936 for visitors to enjoy nature and see Florida's wildlife close-up; and,

WHEREAS, the Everglades Wonder Gardens is within real property described in Exhibit "A", attached hereto which is located in downtown Bonita Springs, Florida (the "**Gardens**"); and,

WHEREAS, in April 2015, the non-profit Bonita Wonder Gardens purchased the historic attraction to save it from potential commercial development, taking possession of the real property and operation from the original owners and acquiring the business name; and,

WHEREAS, later in January 2018, the City took title to the land, and improvements thereon constituting the Gardens, pursuant to a certain Operating Agreement entered into between the City and Operator with an effective January 3, 2018; and,

WHEREAS, since January 2018, under public-private partnership, the private-entity Operator has continued to operate, maintain, and improve the Gardens using their own finances for the benefit of the City and the general public; and,

WHEREAS, the Operator and City agree that the Gardens are in need of reinvestment and the Operator has developed a strategic plan to raise new funds for new and refreshed exhibits; and

WHEREAS, the City has identified several deficiencies at the Gardens in its citywide facility assessment which are in need investment; and

WHEREAS, the Parties desire that Operator continue to operate the Gardens, and the Parties make this Agreement in order to update and modify the terms of operation.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS

I. Grant of License; Services; Term.

a. License. City hereby grants to Operator an exclusive license during the term of this Agreement to operate the Gardens and provide the Services (as defined below) at the Gardens, in accordance with the terms of this Agreement. So long as this License remains in full force and effect, City shall not authorize or permit any other person or entity, and shall not on its own behalf, unless as otherwise specified herein in this Agreement, provide the Services at the Gardens.

b. Services. City grants to Operator the sole and exclusive right to operate, maintain, and conduct the normal business activities of a zoo and botanical gardens, along with all ancillary and related services, duties, responsibilities, and obligations thereto (the “**Services**”) at the Gardens, for the benefit of the Gardens, the City, and the public. Such Services include, without limitation:

- i. Maintain and keep in good condition the grounds, facilities, equipment, and chattels of the Gardens, including, without limitation, all facilities, parking lots, equipment, capital improvements, cages, fences, landscaping, signage, concessions, and all similar property;
- ii. Provide care, treatment, and quality of life for all plants and animals housed at the Gardens;
- iii. Provide educational and recreational experiences, programs, and events for guests and school groups;
- iv. Operate and oversee all ticket sale and admissions activities into the Gardens;
- v. Operate and oversee all concessions, food and beverage, souvenirs, and related activities at the Gardens.

c. Quality of Service. All Services shall be performed in a professional manner, exhibiting the highest degree of quality and in conformance with industry standards. The Gardens shall be open to the public at hours and days generally comparable to operations in similarly developed facilities in other Florida cities.

d. Term. The term of this Agreement shall commence on the Effective Date and shall continue until October 1, 2034, unless or until either Party elects to terminate this Agreement in accordance with the terms herein. Notwithstanding, the Parties may extend this Agreement for successive terms or longer, with or without further modification, upon mutual agreement of the Parties.

II. Ownership of Property; Acceptance of Donations

a. Title to Real Property. Title to all real property comprising the Gardens, including any non-removable facilities, structures, fixtures, and non-removable improvements situated on the real property, shall without limitation be deemed as property of the City.

b. Plants and Animals. Plants and trees in the ground shall be the property of the City. Understanding that all animals at the Gardens require federal and state license and permitting, and that the majority of animals were acquired by the Operator via non-transferable rescue and rehabilitated wildlife adoption agreements, and that the Operator must abide by federal and state law, legal ownership and permitting of animals will remain as-is with the Operator and additional contracted license holders that currently own the animals as outlined in acquisition and curatorial records.

c. Equipment and Other Property. Ownership of all equipment, inventory, and other property at the Gardens, including cages, furniture, artwork, décor, and personal items, not affixed to any real property or non-removable structures, signs and equipment, shall vest with the Operator.

d. Intellectual Property. Understanding the proprietary nature of trademark and brand, and the how it is essential to the operational, retail and fundraising capacity of the charitable organization Operator, ownership of the name “Everglades Wonder Gardens” and all related trademarks, trade names, copyrights, symbols, pictures, logos, and insignias (“**Intellectual Property**”) shall remain with the Operator.

e. Donations. Operator shall have the right to solicit and accept donations on behalf of and for the benefit of the Gardens; provided that, any donations over \$50,000 conditioned upon a naming rights or any condition that would conflict with this Agreement shall require the express approval of the City prior to acceptance of the donation.

f. Agreements to Cooperate. The Parties shall cooperate to conduct any transfer of ownership contemplated under this Agreement and necessary to effect the terms of this Agreement, if required. Each party shall sign all deeds, transfers, assignments, and other agreements necessary to carry out the intent of this Agreement.

III. Funding

a. Daily Operations. The day-to-day operations, maintenance, and customary business of the Gardens shall be funded through the proceeds of admission ticket sales, concessions, souvenir sales, donations, memberships, events, rentals, and all other normal business activities taking place at the Gardens. Operator shall be responsible for collection of all such proceeds from said operations. Operator shall have discretion to set prices for admission tickets, concessions, souvenirs, memberships, and all other attractions, so long as such rates are reasonable in comparison to the quality or service and attractions provided to the public, in Operator’s sole opinion.

b. Commencing upon the Effective Date, Operator agrees to pay City, without prior demand therefor, an annual minimum capital contribution assessment (the “Assessment”) of fifty thousand dollars (\$50,000.00), for the first fiscal calendar year (beginning on October 1 of each year) after the Effective Date, payable in advance in equal monthly installments. Commencing with the beginning of the second calendar year after the

Effective Date and continuing for each and every calendar year thereafter throughout the Term and all extensions thereof

c. Required Contributions and Assessment Setoffs. The Operator agrees during the initial Term of this Agreement to invest \$3,000,000 in new facilities, structures, fixtures, and other non-removable improvements or infrastructure, inclusive of engineering and design costs, into the Gardens, the value of which shall be documented to the satisfaction of the City. The Operator similarly agrees to work towards addressing existing facility deficiencies, as identified in the City's Facility Assessment Report (the "Report") dated June 27, 2023. The Operator will receive a dollar-for-dollar setoff against future Assessment contributions not yet due for any deficiencies resolved by the Operator. Eligible deficiencies include those identified as Priority 1 in the Report or such other needed improvements agreed to by the City.

d. City Allocation. The City, at its sole discretion, may allocate funds from its general budget to the Gardens for the purpose of funding capital improvements, special events, facility upgrades, and whatever other uses the City deems necessary and proper for the benefit of the Gardens. The Operator shall coordinate with the City any requests for event participation or the funding of improvements at the Gardens.

IV. Maintenance

a. Maintenance. Operator shall be responsible for the maintenance of the Gardens and its facilities, structures, grounds, equipment, landscaping, and other property. Such maintenance shall include, without limitation, daily janitorial and cleaning services, customary repairs for normal wear and tear, the costs of utilities and electric to service the Gardens.

b. Capital Improvements and Design. Operator shall be responsible for all capital improvements for the benefit of the Gardens, including, without limitation, all repair or replacement of roofs, HVAC systems, lighting and electrical, plumbing, irrigation, structural improvements, flooring, sidewalks, fences, cages, and other physical elements of the Gardens property. Where applicable, any improvements which are estimated to exceed the applicable thresholds of Section 255.20, Florida Statutes, must be secured according to the City's procurement policies. Operator shall, if applicable, follow the City's procurement policies with respect to the acquisition of consulting services pursuant to Section 287.055, Florida Statutes.

c. Assurances. Operator represents and warrants that all maintenance, repair, and replacement work required by this Agreement shall be performed by licensed and bonded contractors who shall perform the work in a professional and workmanlike manner in conformance with industry standards. Operator represents and warrants that no such work will commence without obtaining all required permits and issuing all required notices prior to commencement. Operator shall not allow any liens or encumbrances to be placed upon the Gardens property. In the event any lien or encumbrance is recorded against the Gardens

property, Operator agrees to remove the lien or encumbrance immediately by bonding until such dispute over the amounts underlying the lien or encumbrance are resolved.

d. Security. At all times, Operator shall be responsible for the security of the Gardens, including, without limitation, all structures, facilities, equipment, plants, animals, and other property thereon.

V. Insurance and Indemnification

a. Property Insurance. Operator shall, during the Term of this Agreement, obtain and keep in force insurance upon the Gardens in an amount equal to the full replacement cost, with loss payable to City and to any lenders insuring loss or damage to the Gardens. Such insurance shall provide protection against any peril generally included within the "All-Risk" form of property insurance policy, which includes insurance against sprinkler damage, vandalism and malicious mischief. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage, including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Gardens required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. Said policy or policies shall also contain (i) an agreed valuation provision in lieu of any coinsurance clause and (ii) a waiver of subrogation. Operator shall furnish to City evidence reasonably satisfactory to City of said property insurance policy. City shall be named as an additional insured on Operator's property insurance policy; and all of the specifications and provisions applicable to the extent appropriate to Operator's liability insurance policy below shall also be applicable to Operator's property insurance policy, on a reciprocal basis for the benefit of City.

b. Operator's Property. Operator assumes the risk of damage to any fixtures, goods, inventory, merchandise, equipment, personal property of any kind located on the Property. City shall not be liable for injury to Operator's business operations or any loss of revenue therefore relative to damage to such items. Operator, at its sole cost and expense shall, either by separate policy or at Operator's option, by endorsement to a policy already carried, maintain insurance coverage on all of Operator's personal property or fixtures to the Gardens installed by Operator, in, on, or about the Gardens similar in coverage to that required to be maintained by Operator under Section VI.a., above. Such insurance shall be full replacement cost coverage. The proceeds from any such insurance shall be used by Operator for the replacement of personal property or the restoration of fixtures installed by Operator in the Gardens. Operator shall provide City with written evidence that such insurance is in force on the Effective Date and, thereafter, upon each anniversary of the Effective Date, or upon the request of City. Operator, at Operator's cost, may carry such other insurance as Operator desires for Operator's protection with respect to business interruption or loss of income.

c. City Insurance. At their sole discretion, the City may maintain property insurance either through a policy of self-insurance, by inclusion on their existing property insurance

policy, or by obtaining a separate policy of insurance, providing coverage for the Gardens. City shall not be liable to Operator or any other party, and Operator assumes all risk of damage to personal property, unless and to the extent such loss is due to City's active negligence or willful misconduct. Further, City shall not be responsible for any repair or replacement of business or personal property for vendors, occupants, or third-party tenants who are permitted to use and occupy the Gardens property by the Operator.

d. Liability Insurance. Operator shall obtain and maintain in full force throughout the term of this agreement commercial general liability insurance in an amount of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Operator shall name the City of Bonita Springs as an additional insured including products and completed operations and the policy shall contain no exclusions for injury or damage caused by "animals, insects, vermin, or reptiles."

e. Indemnification. Operator shall indemnify and hold harmless the City from all suits, claims, actions, demands, judgments, fines, penalties, costs, and similar damages and actions brought against the City by any party or parties as a result of any action or omission by Operator, its employees, directors, officers, representatives, or agents. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its owners, principals, directors, officers, employees, agents, representatives, and assigns. Nothing contained herein shall constitute a waiver by the City of its sovereign immunity or the provisions of Florida Statutes §768.28. Further, nothing herein shall be construed as consent by the City of Bonita Springs, a Florida governmental entity, to be sued by third parties in any manner arising out of this Agreement.

VI. Employees and Management

a. Operator Responsibility. Operator shall be responsible for the hiring, retention, training, management, oversight, and conduct of its agents, representatives, officers, and employees. Operator shall maintain and conduct all safety requirements and training for employees, as well as maintaining adequate workers' compensation insurance. Operator shall be responsible for performing any background checks and assuring the qualifications of each employee to effectively perform their duties at the Gardens. City reserves the right to address concerns with the private-entity Operator's Board of Directors, regarding any employee of the Gardens for gross negligence, misconduct, or unfitness for specific employment.

b. Salary and Benefits. Gardens employees shall look exclusively to Operator for payment and satisfaction of any salary, wages, bonuses, commissions, or benefits. Employees of the Gardens shall not be deemed employees of the City and shall not be entitled to receive any benefits or privileges offered to City employees.

c. Nondiscrimination. Operator shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, or national origin. Operator and its employees shall not discriminate because of race, religion, color, age, ancestry, sex, or national origin against any person by refusing to furnish such person any

service or privilege offered to or enjoyed by the general public, nor shall Operator or its employees publicize the facilities provided under this Agreement in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, age, ancestry, sex, or national origin.

VII. Oversight and Actions Requiring City Approval

a. Oversight. The City shall have the right to conduct regular reviews of the Garden's facilities upon twenty-four (24) hours prior notice to the President of the Gardens. Such reviews shall include the right to physically inspect the Gardens, its facilities, structures, and equipment, to ensure compliance with this Agreement. Operator shall provide access to the Garden's reports within a reasonable time period and upon written request from the City. The City has the right to appoint an ex officio non-voting member to Operator's Board of Directors.

b. Reporting. Operator shall provide quarterly reports to the City regarding its operations, financials, and initiatives.

c. Actions Requiring City Approval. Notwithstanding any terms to the contrary within this Agreement, Operator shall be required to obtain the express, written consent of the City prior to taking any of the following actions regarding operation of the Gardens:

- i. Entering into any lease or sublease with a third party for use and occupancy of real property at the Gardens except for the normal rental of facilities for weddings, parties, and other events or educational classes;
- ii. Assignment of any duties, responsibilities, or obligations arising under this Agreement to a third-party contractor or vendor;
- iii. Non-emergency structural improvements to any permanent buildings at the Gardens totaling over \$50,000;
- iv. Hosting, facilitating, or catering to any special events outside of the normal event and rental business activities of the Gardens (see subsection VII-i. above);
- v. Taking on any indebtedness for the benefit of the Gardens which would require a mortgage on the real property;
- vi. Naming rights to any facilities, exhibits, or programs at the Gardens; and
- vii. Entering into any agreement whereby any Garden's real property is used as collateral to secure payment or performance of the agreement.

d. Consent Withheld. Consent for any of the above actions may be withheld by the City for any reason and at its sole discretion. City may condition the approval of any such actions upon any terms, conditions, and contingencies that the City deems necessary and proper.

VIII. Default and Termination

a. Default. Should either Party commit a material breach of this Agreement, the non-breaching Party shall send written notice to the breaching Party which outlines the conduct

causing such breach and allows thirty (30) days to cure such breach. Should the breaching Party fail or refuse to cure such conduct causing the breach within the thirty (30) day period, the breaching Party shall be considered in default of this Agreement.

b. Remedies. In the event a Party defaults under this Agreement, the non-breaching Party may elect to terminate this Agreement and pursue any available remedies at law or in equity. In the event the Agreement is terminated, Operator shall continue to operate the Gardens for one hundred eighty (180) days following the effective date of termination to allow the Operator to relocate to a new location and for the City to transition the Gardens to a new operator.

IX. Miscellaneous

a. Public Records. To the extent the Operator is deemed an agent or contractor of the City pursuant to Section 119.0701, Florida Statutes, Operator shall preserve and provide public records to the City as required.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: City Clerk, (239) 949-6262, michael.sheffield@cityofbonitasprings.org, 9101 Bonita Beach Road, Bonita Spring, FL 34135.

b. Media Communications. The Parties shall coordinate prior to any press release or communication with any television, print, or online media source when such communications involve this Agreement, the relationship between the Parties, any crime or incident that occurs at the Gardens or involves the Operators directors, employees, or volunteers.

c. Force Majeure. Neither party shall be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within thirty (30) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding one hundred eighty (180) days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Agreement.

d. Taxes. During the Term, Operator shall be liable for the payment of all real estate taxes, special assessments, and any other taxes, levies, or impositions charged by an appropriate taxing authority with respect to the Gardens or its operations.

e. Modification. This Agreement may only be modified by written instrument signed by both Parties.

f. Assignment. Operator may not assign this Agreement, or any rights, privileges, or duties hereunder, without the written consent of the City.

g. Jurisdiction and Enforcement. This Agreement shall be governed by the laws of the state of Florida. For any action brought to enforce or interpret this Agreement, jurisdiction shall lie exclusively in Lee County, Florida. For any such action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

h. Severability. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

i. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this agreement below on April 3, 2024.

ATTEST:

CITY OF BONITA SPRINGS, FLORIDA
CITY COUNCIL

By: _____
Michael Sheffield, City Clerk

By: _____
Rick Steinmeyer, Mayor

Approved as to form:

By: _____
Derek Rooney, City Attorney

Bonita Wonder Gardens, Inc., a Florida
nonprofit corporation,

By: _____

[Name]

Its: [Position]

Witness

Witness Printed Name

Witness

Witness Printed Name

STATE OF FLORIDA

COUNTY OF _____

The foregoing development agreement was acknowledged before me this _____ day of 2024,
by [name], [position] of Bonita Wonder Gardens, Inc., a Florida nonprofit corporation, who is []
personally known to me or has produced _____ as identification.

Notary

(SEAL)