

MEMORANDUM OF AGREEMENT
BONITA ESTERO RAIL TRAIL
Located within Lee and Collier Counties, Florida

This Memorandum of Agreement (“Agreement”) is made and entered into by and between The Trust for Public Land, a California nonprofit corporation (“TPL”), Collier County, a political subdivision of Florida, by and through its Board of County Commissioners, (“Collier County”), the City of Bonita Springs, a municipal corporation of the State of Florida (“Bonita Springs”) and the Village of Estero, a municipal corporation of the State of Florida (“Estero”).

WHEREAS, TPL, Collier County, Bonita Springs and Estero desire to acquire an approximately 11.4-mile railroad corridor and associated lands owned by Seminole Gulf Railway, L.P. (“SGLR”) located in Lee and Collier Counties as depicted in **Exhibit “A”** attached hereto (collectively referred to herein as the “Tract”); and

WHEREAS the purpose of said acquisition is to develop a rails to trails projects wherein the railroad right-of-way (ROW) corridor is converted from rails to a pedestrian and bike trail and;

WHEREAS Collier County, Bonita Springs and Estero (and the Lee County Metropolitan Planning Organization) have previously cooperated to develop and submit federal grant applications to purchase this railroad corridor and develop this rails to trail project and;

WHEREAS, the parties agree that it is in the best interest of Collier County, Estero and Bonita Springs and TPL to cooperate on certain aspects of this project; and

WHEREAS, the TPL has agreed to take the lead in ordering preliminary due diligence products, including but not limited to appraisals, appraisal reviews, boundary surveys or sketches, title search products, environmental assessments and the like in order to facilitate the acquisition of the Tract by Collier County, Bonita Springs and Estero;

NOW, THEREFORE, in consideration of the mutual benefits to Collier County, Bonita Springs, Estero, and TPL it is agreed that:

- 1. Parcels Covered by this Agreement:** The Tract of land identified in **Exhibit “A”**, attached, are the only parcels of land subject to this Agreement.

- 2. Pre-Acquisition Requirements and Costs:** TPL, when it deems appropriate, will acquire and initially pay for all pre-acquisition due diligence services, including but not limited to appraisals, appraisal reviews, boundary surveys or sketches, title searches, environmental assessments, and any other studies or inspections to allow the parties to accurately value and ascertain the actual condition of the Tract (“Pre-Acquisition Costs”). TPL shall follow all relevant rules and requirements of Collier County, Bonita Springs, and Estero, included herein, so that the due diligence services may be relied upon by all parties. TPL will procure the cost estimate and engagement letter for each of the Pre-Acquisition Costs and allow Collier County,

Bonita Springs and Estero to review for approval prior to engagement. Upon written approval from each party to proceed, TPL will order the due diligence product and then invoice each party for reimbursement. The Pre-Acquisition Costs will be provided to the parties for review and approval and, if approved, split equally between the three (3) parties (Collier County, Bonita Springs, and Estero). TPL shall provide a copy of all due diligence products to all parties within 3 business days after completion.

- a. Appraisal(s). Collier County, Bonita Springs, Estero and TPL previously jointly funded the completion of an independent appraisal with an effective date of September 9, 2020. TPL, at its sole cost, has procured an updated appraisal with an effective date of March 13, 2024, completed by the same independent appraiser (the “Appraiser”). TPL will provide a copy of this appraisal report upon request. Collier County, Bonita Springs, Estero and TPL may determine a subsequent update of the appraisal or a second independent appraisal report or appraisal review report(s) prior to acquisition. Parties agree to collaborate with respect to the future need for the completion of any appraisal report update, additional appraisal(s), and review appraisal(s).
 - b. Title Review. TPL has already obtained a title commitment for the Tract, which will be made available to the parties to review. Collier County, Bonita Springs, and Estero may review the title commitment and will provide TPL notice of any title objections.
 - c. Environmental Site Assessment. TPL will contract with an environmental consultant to conduct a Phase I Environmental Site Assessment (“ESA”) of the Tract, naming all parties to this Agreement as intended users that may rely on the report. Should a Phase 2 ESA be recommended, the parties acknowledge that any testing protocol will be agreed to in advance by all parties.
 - d. Boundary Survey. TPL will contract with a professional land surveyor to conduct an ALTA survey of the Tract. The survey will be certified to all parties that may take title to the Tract or a portion thereof.
3. **Acquisition, Construction, and Management Responsibilities.** Estero, Bonita and Collier County will collaborate with each other to reach agreement regarding collective or cooperative responsibility to raise the acquisition, construction and management funding necessary to complete the trail.
 4. **Confidentiality:** The parties will maintain the confidentiality of all appraisals. Regardless of anything contained herein, parties governed by Chapter 119, Florida Statutes, shall maintain confidentiality subject to the terms and limitations set forth in Florida Statutes § 166.045 and § 125.355, and other applicable law. All parties shall disclose confidential information to their employees on a “need to know” basis only.
 5. **Steering/Coordinating Committee.** Estero, Bonita, and Collier agree to form and participate in an steering committee comprised of one elected official from each local government and a lead

staff member. TPL and Friends of BERT will designate a liaison to this committee as well. This committee will meet regularly to discuss and coordinate activities associated with the purchase of the rail corridor. The steering committee will meet from time to time in either Estero, Bonita, or Collier, and staff of the relevant meeting location will ensure the meetings are advertised and conducted as required by Florida Statutes § 286.011.

6. **Terms and Conditions of Transfer:** TPL holds site control of the Tract pursuant to a binding purchase agreement with SGLR. TPL shall offer the Collier County, Bonita Springs and Estero the opportunity to enter into a purchase agreement with TPL for the of the Tract from TPL subsequent to TPL's acquisition of the Tract.
7. **Notices and Pre-Acquisition Invoices:**
 - a. **Collier County** – County Manager, 3299 Tamiami Trail East, Suite 202, Naples, FL 34112-5746. Telephone: (239) 252-8383
 - b. **Bonita Springs** – City Manager, 9101 Bonita Beach Road, Bonita Springs, FL 34135. Telephone (239) 949-6262
 - c. **Estero** – Village Manager 9401 Corkscrew Palms Circle, Estero, Fl 33928. Telephone; 239.221.5035. Email: info@estero-fl.gov*
 - d. **TPL** – Southeast Region Conservation Director. 1834 Hermitage Blvd, St. 100, Tallahassee, FL 32308. Telephone: (850) 222-7911.
8. **Termination:** Notwithstanding any provision to the contrary, this Agreement shall terminate no later than June 30, 2026. Any approved Pre-Acquisition Costs incurred by TPL prior to this date will be reimbursed pursuant to the terms herein. Any costs incurred after June 30, 2026 will not be reimbursed.
9. **Assignment of Interest.** No party will assign or transfer any interest in this Agreement without prior written consent of the other parties.
10. **Successors and Assigns.** The Parties each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.
11. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
12. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect.

13. Non Waiver. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.

14. Governing Law and Venue. This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Lee County.

15. Attachments. All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.

16. Amendments. The parties may amend this Agreement only by mutual written agreement of the parties.

17. Captions and Section Headings. Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.

18. Counterparts. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

19. Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.

20. Entire Agreement. This Agreement constitutes the entire Agreement and supersedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

THE TRUST FOR PUBLIC LAND, a California nonprofit corporation

By:

Its: _____

COLLIER COUNTY, FLORIDA

By: _____

, Chair

Board of County Commissioners

ATTEST:

APPROVED AS TO FORM

Clerk

Collier County Attorney's Office

(SEAL)

CITY OF BONITA SPRINGS

ATTEST (By Corporate Officer)

By: _____

By:

Print: _____

Print:

Title: _____

Title:

VILLAGE OF ESTERO

ATTEST (By Corporate Officer)

By: _____

By:

Print: _____

Print: _

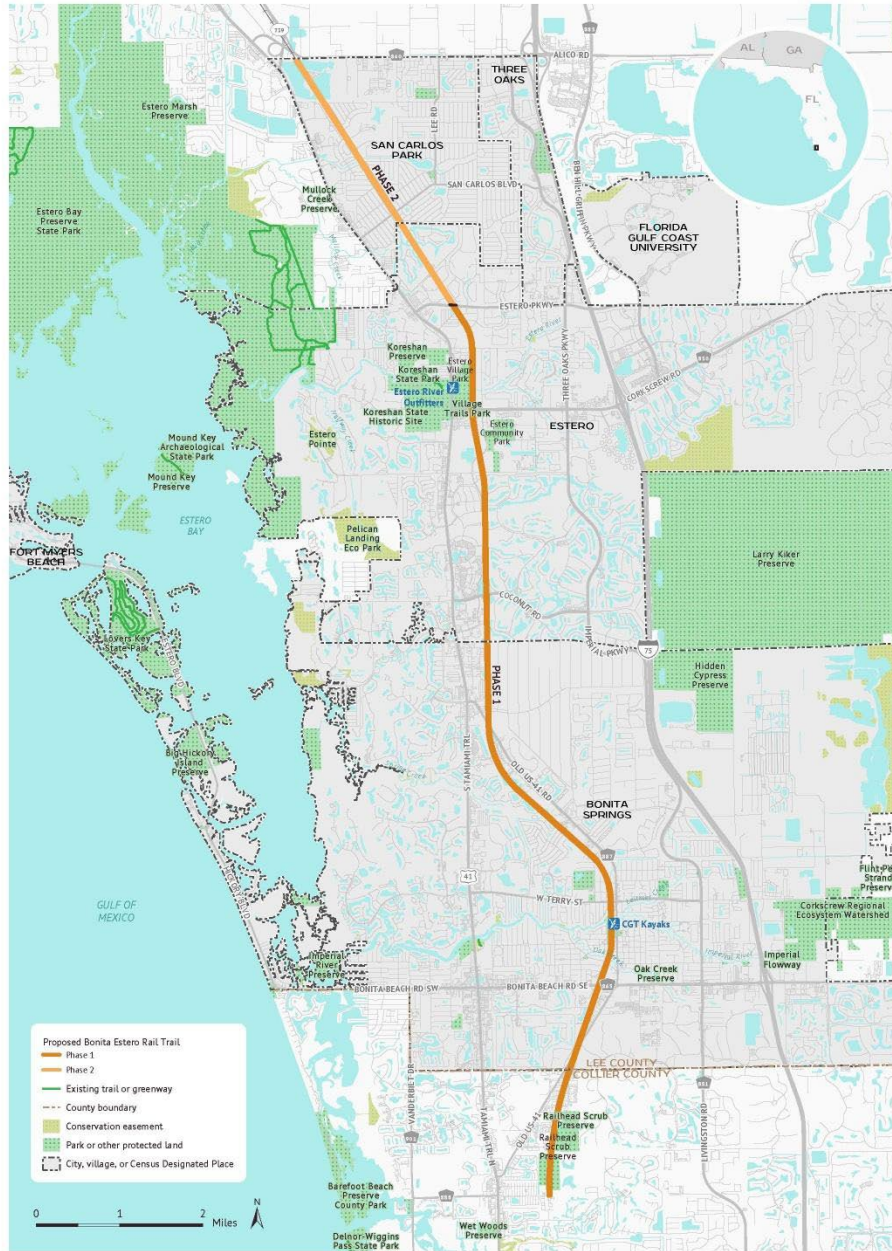
Title: _____

Title:

EXHIBIT "A"

The Property (Phase 1)

The approximately 11.4-mile corridor from the Northern edge of Estero Parkway south to the corridor's terminus at the northern ROW extension of the Wiggins Pass Road. The segment is depicted on the following graphic and labeled as Phase 1.



Bonita Estero Rail Trail

COLLIER AND LEE COUNTIES

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