

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
March 4, 2026

Agenda Item: BERT acquisition

Motion to approve Purchase and Sale Agreement and to authorize the Village Manager to initiate the due diligence efforts which must be completed prior to the expiration of the due diligence period.

Background: As Council knows (and as was reviewed at the February 18th Council workshop), for over a year, the Village has been involved in discussions with the Trust for Public Land (TPL), Seminole Gulf Railway (SGR), Bonita Springs, and Collier County regarding the potential acquisition of a portion of rail line controlled by SGR within these respective jurisdictions. The Estero portion of the line (the Property) lies from the Estero Parkway right-of-way at approximately SGR Milepost AX 979.40 south to SGR Milepost AX 983.5, which is the Village's boundary with the City of Bonita Springs. The total length is approximately 4.1 miles.

After numerous discussions over time at the executive level, legal counsel for TPL has proposed to the three governmental entities two options, one a Purchase and Sale Agreement (PSA) and the other a Lease-Purchase Agreement (LPA).

The LPA

The Village Attorney and legal counsel for TPL have finalized the language for the Lease-Purchase Agreement and the essential terms of that option are:

- Village would lease the Property for use as a public recreational trail for two years
- Village has the right to cancel the lease at the end of year one or year two only if, the Lessee, in its sole discretion, makes a formal determination that moneys from ad valorem taxes, fees, other taxes or assessments, or from other revenue sources are insufficient to pay the rent or purchase payments
- Village pays a base rent of \$15,000,000.00 on the commencement date. At the end of year one, the Village pays \$2,396,105.00. At the end of year two, the Village pays \$2,396,104.00. The Village would be credited base rent payments when and if it closes on the property.
- Village pays interest on lease payments of \$191,688.36 on the first anniversary, and \$95,844.16 on the second anniversary (representing 4% of outstanding

balances of rent payments. These payments are intended to allow TPL to cover its financing costs during the lease period.

- Village cannot assign, transfer, mortgage or sublease the Property during the lease, but may grant concession agreements during this period.
- Before the LPA takes effect, TPL will collaborate with Village to conduct all due diligence: updated appraisal(s), boundary survey, title, and phase 1, and phase 2 if needed, ESA. This to provide the Village (and TPL) information on and acceptance of the condition of the property before TPL purchases the property and before either the LPA becomes effective or Village is committed to purchasing from TPL.
- Village has the exclusive and irrevocable right and option to purchase the fee simple title to the Property on or at any time before the 60th day prior to the 2nd anniversary of the Commencement Date, with the purchase price being \$19,792,209.00 (prior to base rent payment credits).

The PSA

Turning to the Purchase and Sale Agreement, while as of the date of this memorandum final wording has not been arrived at between legal counsel, the essential terms of that option are:

- Once the Village signs the Purchase and Sale Agreement, an Inspection Period is triggered and the Village would have until September 29th 2026 to make such inspections and investigations as it deems appropriate to assess the condition of the Property.
- During the Inspection Period, the Village may terminate the Agreement if, in its sole discretion, it deems the survey, status of title, or physical or environmental condition to be unacceptable.
- If Village does not terminate during the Inspection Period, closing shall occur on or before October 23rd 2026.
- Village will receive a quit claim deed conveying title and interest to the Property, but subject to all existing roads, fiber optic facilities, public utilities and all licenses, leases and other agreements in effect at the time of execution of the Agreement, as well as all matters of record (easements and such recorded in the public record). These are discussed in the Common Elements section below.
- Deed will include restrictive language confirming that the Village cannot use the Property for housing, growing of food or livestock, hotels, or schools.

Common Elements to Either Transaction

While the obvious difference between the LPA and the PSA is an initial period where the Village would be leasing land owned by TPL, vs the Village's simply taking title right away, both models have the same ultimate purchase price (\$19,792,209.00). Also common to both models:

- Village takes title knowing the trail is railbanked, and thus potentially subject to an order from the Surface Transportation Board reactivating rail service in the future.
- Village pays for various expenses including payment of doc stamps for recording the deed and 50% of certain expenses such as survey and title work.
- SGR will remove all rail, rail fastenings and grade crossing signal equipment within 730 days after Village purchases or exercises its option to purchase.
- Village will assume those leases, licenses, contracts and agreements which SGR had granted over time as to the part of the rail line within Estero. The list of these agreements is included as an exhibit to each agreement (lease or purchase) and is also included as a separate tab in the agenda notebook on this item.
- The Village Attorney has reviewed all of the leases, licenses, contracts and agreements the Village would inherit and has calculated that with the available documents on hand, the Village would **gain \$85,551.61 annually**.
- The Village can enter into concession agreements or new lease/license agreements, so long as these are not incompatible with either recreational trail use, the restoration of rail service.
- If the Surface Transportation Board ever decided to reactivate rail service, SGR would be required to pay the Village at the time of reactivation the then depreciated value of all trail and related infrastructure improvements made by Buyer, its successors, assigns and Interim Trail Manager and a sum equivalent to the Purchase Price as adjusted by the same percentage of change reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor" ("CPI").
- While there has been some discussion during the negotiations regarding SGR's retention of various lease and license payments/revenues paid pre-closing, the draft Agreements presented by TPL do not address this topic and so, as written, the Village would be entitled to receive these revenues upon taking title to the

property. The Village understands that in some cases advanced payments have been made by lessees or licensees have been made to SGR covering time the Village would be the new owner. Unless any such payment is of a financially significant amount, the Village plans to simply work with the licensee or lessee to ensure future payments are paid to the Village when those payments next become due.

With the language of the PSA and LPA options both now finalized between the Village's counsel and TPL's counsel, Village Council may now decide to move forward with either option (or to not move forward at all or to take some other action as Council desires).

Action Requested: Motion to approve Purchase and Sale Agreement and to authorize the Village Manager to initiate the due diligence efforts which must be completed prior to the expiration of the due diligence period.

Process and Timeline: If Council approves, the Village Manager will initiate the due diligence efforts and report back to Council well in advance of the September 29th due diligence period expiration date.

Financial Impact: Once the Village begins due diligence work, the cost would be approximately \$200,000 to \$250,000.

Prepared by: Robert Eschenfelder, Village Attorney

Attachments:

1. The list and description of leases/licenses, etc. the Village would assume (and revenues related thereto) is attached. (Copies of the contract documents and other related materials are in the separate BERT notebook provided to Council).