AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
October 28, 2026

Agenda Item:

Final review of BERT transaction prior to cancellation deadline

Final direction from the Village Council is sought as to whether the Village should terminate the PSA by October 29th or to proceed to closing on the property.

Background:

The Village Council has, in several prior votes, supported the acquisition of a portion of unused rail line within the Village with the ultimate aim of creating a recreational "rail-to-trail" facility to enhance recreational opportunities for its residents.

In April of 2025, the Village entered into an agreement with Collier County, Bonita Springs, and the Trust for Public Lands, to allow for the collaborative sharing of costs associated with examination of and due diligence around the acquisition of the tract of railroad land for the Bonita Estero Rails to Trails (BERT) initiative. This agreement apportioned the costs associated with pre-acquisition due diligence (including appraisals, surveys, title work, environmental assessments, and the like), among the parties, with the parties combining resources for certain work which could be relied upon by all parties, while TPL would cover certain other costs. The agreement, originally to expire on June 30th 2026, was extended through August to allow for due diligence efforts subsequent to the Bonita referendum vote. Subsequent pre-acquisition costs incurred thereafter would be borne by the party incurring the expense (as outlined in each governmental party's purchase agreement).

On March 5th 2026, the Village and TPL entered into a Purchase and Sale Agreement (PSA) in which TPL agreed to sell and Village agreed to buy the some 66.7 acres of land making up the portion of the rail line within Estero's boundaries. The purchase price is $19,792,209. The PSA granted the Village an inspection deadline to conduct due diligence. Under the PSA, the Village has the authority to terminate the PSA up to the inspection deadline. Beyond that date, the Village would be obligated to close on the purchase.

The original PSA contained an inspection/due diligence deadline of September 29th 2026

with closing to occur on October 23rd 2026. On September 23rd 2026, the Village and TPL entered a First Amendment to the PSA establishing October 29th 2026 as the new Village inspection period deadline. The new closing date is on or before January 14th 2027. The First Amendment to the PSA also authorized the Village Manager to decide to terminate or proceed based on the due diligence process. However, since Council is meeting prior to the expiration of the inspection period, the Village Manager wishes to provide this final update and obtain final direction from the Council with respect to proceeding with the acquisition.

As further elaborated on in the attached due diligence memo, since signing the PSA, the Village has worked in cooperation with the other two government entities and TPL to ensure proper due diligence occurred. Those efforts included review of the title to be received by the Village, review of the many crossing agreements and encumbrances the Village would inherit, review of current environmental conditions along the rail line, development of a plan to ensure eventual development of the trail will address any environmental concerns are addressed to state requirements, and review of the survey of the land to be acquired by the Village. While the Village will not know precisely the cost associated with the capping or other remediation of any areas where soil testing indicates a need to remediate, the Phase II report and subsequent "step out" work gives the Village significant confidence that these costs are within the costs already expected when the Village made the decision to enter the PSA.

While terminating the PSA or proceeding to closing is ultimately a business decision to be made by Council, the due diligence done and the best information available to date confirms that there are no financial or legal surprises which would alter the Village's expectations and understandings about the transaction.

Action Requested:

Final direction from the Village Council is sought as to whether the Village should terminate the PSA by October 29th or to proceed to closing on the property.

Process and Timeline:

If Council directs termination, a Notice of Termination will be sent to TPL by the deadline. If Council directs the Village Manager to proceed to closing, Village staff will continue to work with TPL and appropriate consulting professionals to finalize state approval of

capping plan, close on the pending bond sale to in part fund the acquisition of the trail, and to execute the rail management plan required by the Surface Transportation Board.

Financial Impact:

If the Village terminates the PSA, any funds expended during the due diligence period would not be recovered. If the Village proceeds to closing, the Village would be obligated to pay the agreed purchase price.

Prepared by: Robert Eschenfelder, Village Attorney

Attachments:

1. Due Diligence Memo
2. Phase II Environmental Report
3. Draft Capping Plan
4. Final BERT Spreadsheet Crossing agreements Estero Portion
5. Presentation