

MINUTES

March 16, 2009

The City Council of the City of Fort Myers, Florida, met in regular session at City Hall, 2200 Second Street, its regular meeting place in the City of Fort Myers, Florida, on Monday, March 16, 2009, at 4:34 o'clock p.m. Present were Mayor Jim Humphrey, presiding, Council Members, Warren J. Wright, Johnny W. Streets, Jr., Levon Simms, Michael Flanders, Randall P. Henderson, Jr., and Thomas C. Leonardo. Also present were William P. Mitchell, City Manager, Marie Adams, CMC, City Clerk, and Grant W. Alley, City Attorney. Absent: None.

The meeting was opened with prayer led by Grant W. Alley, City Attorney.

Mayor Humphrey led the Pledge of Allegiance to the Flag of the United States of America.

ANNOUNCEMENT Mayor Humphrey stated that DOC Hospitality opened Hotel Indigo, 2115 Main Street and 1520 Broadway.

A. PRESENTATION REGARDING THE 2010 CENSUS AND COMPLETE COUNT COMMITTEE Angelia Foiler, Partnership Specialist, U.S. Census Bureau, stated that a Complete Count Committee was being formed in Lee County. Ms. Foiler stated that the U.S. Census count would start on April 1, 2010. Ms. Foiler stated that the partnership specialists would go into the community to partner with community leaders and organizational leaders in low count or hard-to-reach areas. Ms. Foiler stated that the hard-to-reach areas of Lee County were Suncoast, Dunbar, communities of Haitians in Cape Coral and Lehigh Acres, and Hispanics in Bonita Springs. Ms. Foiler stated that a partnership with businesses and organizations would provide a more accurate count. Ms. Foiler stated that the Hispanic and Haitian communities were close-knit and contact would be made with the pastors of the communities. Ms. Foiler stated that educational materials would be distributed because the numbers for Lee County were low in the 2000 Census. Mayor Humphrey stated that the grants from the Federal and State government were dependent upon population and an accurate count was important. Ms. Foiler stated that documented and undocumented residents needed to complete the questionnaire. Ms. Foiler stated that there were 10 questions on the 2010 census form and people would be available to help those who were illiterate complete the questionnaire. Ms. Foiler stated that the churches would assist in getting the undocumented residents to complete the census. No action was taken.

PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEM: STIPULATED SETTLEMENT AGREEMENT FOR CASE NO. 08-CA-7558 VIRGINIA SPLITT V. CITY OF FORT MYERS AND THROGMARTIN RIVERFRONT CORPORATION REGARDING THE VUE Cindy Butler, 1440 El Prado Avenue, stated that City Council should go beyond the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation and consider purchasing The Vue, 2000 and 2006 West First Street and add it to the boundaries of Centennial Park, 2000 West First Street. Ms. Butler stated that Parcel C, the southernmost portion of The Vue property where the Edison Sailing Center and commercial building would be located were in foreclosure as well as the area for parking at 1300 Carson Street owned by Throgmartin Riverfront Corporation. Ms. Butler stated that land values had changed since The Vue property was appraised and because of declining values it should be reappraised. Ms. Butler stated that the Florida Communities Trust Florida Forever Parks and Open Space Grant Program would provide assistance in purchasing the property. Ms. Butler stated that there may be \$63,000,000.00 available for parks and open space if approved by the Legislature. Ms. Butler stated that a community or non-profit could be awarded up to \$6,300,000.00 or 10 percent of the advertised amount of available funds. Ms. Butler stated that cities with populations of more than 10,000 required a minimum match amount of 25 percent and there would be an expense to

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the City. Ms. Butler stated that the City and Lee County could partner to obtain the funds. Ms. Butler stated that the application process had started and the deadline was May 13, 2009. Ms. Butler stated that due to the foreclosure, decreasing land value, and potential grant funds it was time to try to acquire The Vue property.

PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEM: NO. 29 MUNICIPAL INITIATIVE PETITION VERIFICATION OF THE NUMBER OF PETITIONS AS SUBMITTED BY CITIZENS FOR A BETTER FORT MYERS GOVERNMENT POLITICAL ACTION COMMITTEE FOR A CHARTER AMENDMENT TO CREATE A CITIZEN OVERSIGHT PANEL

Arenza Thigpen, Jr., 601 N. Kevin Street, Suite 2, Anchorage, Alaska, stated that there was a need for the government to work with residents to resolve all issues. Mr. Thigpen stated that the community made a decision to take action to improve the City regarding the petition for a citizen oversight panel. No action was taken.

PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEM: NO. 29 MUNICIPAL INITIATIVE PETITION VERIFICATION OF THE NUMBER OF PETITIONS AS SUBMITTED BY CITIZENS FOR A BETTER FORT MYERS GOVERNMENT POLITICAL ACTION COMMITTEE FOR A CHARTER AMENDMENT TO CREATE A CITIZEN OVERSIGHT PANEL

Anthony Thomas, Jr., resident, stated that a harmonious relationship was needed between the community and Police Department. Mr. Thomas stated that a citizen oversight panel would create a positive working relationship between the community and Police Department. Mr. Thomas stated that a petition drive was started to create a citizen oversight panel. Mr. Thomas stated that the residents wanted funds spent on streetlights, paving sidewalks and roads and not utilized to settle lawsuits and risk management claims. No action was taken.

PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEM: NO. 29 MUNICIPAL INITIATIVE PETITION VERIFICATION OF THE NUMBER OF PETITIONS AS SUBMITTED BY CITIZENS FOR A BETTER FORT MYERS GOVERNMENT POLITICAL ACTION COMMITTEE FOR A CHARTER AMENDMENT TO CREATE A CITIZEN OVERSIGHT PANEL

Willie B. Green, President, Southern Christian Leadership Conference, Lee County Chapter, 1971 French Street, stated that the City was going through change and it should be a positive change. Mr. Green stated that discussions had been held between the Southern Christian Leadership Conference, City Council, and many department heads. Mr. Green stated that there was agreement that there was a shortage of funds that would continue. Mr. Green stated that funds should not be wasted in circumventing or preventing the petition for a Charter amendment to create a citizen oversight panel. No action was taken.

PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEM: NO. 27A MINORITY BUSINESS ENTERPRISE PROGRAM

Kemi Marten, Southern Christian Leadership Conference, stated that an executive summary had been circulated requesting support and funding for the creation of the Fort Myers Minority Business and Employment Opportunities Council. Ms. Marten stated that funding for a 90 day planning phase Fort Myers Minority Business and Employment Opportunities Council was requested. Ms. Marten stated that meetings had been held with the National Association Advancement of Colored People, Twenty-first Century Group of Pastors, African-American Historical Society, and other local interested parties who supported the concept. Ms. Marten stated that the City had a problem meeting the 15 percent goal of assuring fair and equitable minority participation in government contracts at the local, state, and federal level. Ms. Marten stated that there should be an entity that provided support to minorities who did not have the ability to obtain the financing, bonding, and meet the \$10,000,000.00 liability insurance requirements. Ms. Marten stated that the proposal would allow a coordinating entity to provide the services. No action was taken.

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CONSENT AGENDA Mayor Humphrey stated that the Consent Agenda consisted of items that were considered to be relatively matter of fact. Mayor Humphrey stated that any Council Member may request that any item be removed from the Consent Agenda and placed on the regular agenda for discussion following the adoption of the Consent Agenda. Councilman Flanders stated that Item No. 19 Fire Dance sculpture created by David Black, artist, for placement in Edison Plaza, Centennial Park utilizing funds from the Public Art Fund should be removed from the consent agenda for discussion. Councilman Leonardo stated that Items No. 5 Budget Amendment from Fund 106 Gas Tax Fund to Fund 402 Stormwater Fund and No. 13 Professional Services Agreement with Robinson, Stafford & Rude, Inc. for Value Engineering Services for review of the East Water Reclamation Facilities, Request for Qualifications No. 07/09/08-RFQ-PW should be removed from the consent agenda for discussion.

NO. 1 MINUTES Minutes of the regular meeting held on March 2, 2009, were delivered to City Council.

NO. 2 REAPPOINTMENT TO THE POLICE OFFICERS' RETIREMENT SYSTEM BOARD OF TRUSTEES The Police Officers Retirement System received one nomination to fill the Trustee position and Victor Medico was reappointed to the Police Officers' Retirement System Board of Trustees, effective March 1, 2009, through February 28, 2011.

NO. 3 REAPPOINTMENTS TO THE BOARD OF TRUSTEES, CITY OF FORT MYERS FIREFIGHTERS' RETIREMENT SYSTEM Dino Magas, firefighter, term effective March 15, 2009, through, March 14, 2011, and Matt Galewski, firefighter, term effective January 18, 2008, through January 17, 2010, were reappointed to the Board of Trustees, City of Fort Myers Firefighters' Retirement System

NO. 4 BUDGET AMENDMENT APPROPRIATING FUNDS FROM LAW ENFORCEMENT TRUST FUND AND INCREASING POLICE DEPARTMENT PROFESSIONAL FOR SPECIAL INVESTIGATIONS UNIT PURCHASES The budget amendment, in the amount of \$15,000.00, appropriated funds from Law Enforcement Trust Fund and increased Police Department Professional Services by \$5,000.00 for filing fees and newspaper notices of forfeiture, and increased Other Current Charges by \$10,000.00 for Special Investigations Unit purchases.

NO. 6 BUDGET AMENDMENT DECREASING EASTWOOD RETENTION LAKE CAPITAL PROJECT AND REVISING FUNDING SOURCE FROM UTILITY LINE OF CREDIT TO UTILITY SYSTEM REVENUE BONDS, SERIES 2006 The budget amendment, in the amount of \$200,000.00, decreased the Eastwood Retention Lake, 4600 Bruce Herd Lane, capital project from \$1,200,000.00 to \$1,000,000.00 and revised the funding source from Utility Line of Credit to Utility System Revenue Bonds, Series 2006. The Eastwood Golf Course Irrigation Reuse Lake project included construction of a lined reuse lake, new irrigation pump station, surface water back-up pump station, and storm water piping. City Council awarded the bid to EHC, Incorporated for construction of the Eastwood Retention Lake, in the amount of \$817,919.56, on March 2, 2009. The bid was lower than the original estimate of \$1,200,000.00. The bid did not include Construction Engineering Inspection services and testing estimated at \$180,000.00. The amendment reduced the budget by \$200,000.00 to \$1,000,000.00 to fund the cost of construction, Construction Engineering Inspection services and testing.

NO. 7 BUDGET AMENDMENT DECREASING MARION STREET FORCE MAIN CAPITAL PROJECT AND REVISING FUNDING SOURCE FROM UTILITY LINE OF CREDIT AND UTILITY SYSTEM REVENUE BONDS, SERIES 2006 TO UNPLEDGED SEWER IMPACT FEES AND UNPLEDGED WATER IMPACT FEES The budget amendment, in the

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amount of \$2,126,348.00, decreased the Marion Street Force Main capital project from \$4,126,348.00 to \$2,000,000.00 and revised the funding source for \$4,021,706.00 from Utility Line of Credit and \$104,642.00 from Utility System Revenue Bonds, Series 2006 to Unpledged Sewer Impact Fees, in the amount of \$1,800,000.00, and Unpledged Water Impact Fees in the amount of \$200,000.00. The Marion Street Force Main capital project included construction of a 16 inch sewer transmission main from Ortiz Boulevard, west along various road rights-of-way and drainage easements to just south of Palm Beach Boulevard. The bid awarded on March 16, 2009, to Denco Construction, Incorporated for construction was in the amount of \$1,476,471.75, and the bid was lower than the original estimate of \$4,470,000.00. The bid did not include Construction Engineering and Inspection services or testing which were estimated at \$500,000.00. The budget amendment reduced the budget by \$2,126,348.00 to \$2,000,000.00 to fund the cost of construction, Construction Engineering and Inspection services and testing. Unpledged Water and Sewer Impact Fees were fees charged to developers to fund the anticipated cost of improvements needed as a result of growth and development. The Water and Sewer Impact fees could be used for excess capacity and for other water/sewer plant and transmission/main line capital improvements.

NO. 8 BUDGET AMENDMENT DECREASING VARIOUS FISCAL YEAR 2008-2009 UTILITY CAPITAL IMPROVEMENT PROJECTS FUNDED WITH UTILITY SYSTEM REVENUE BONDS, SERIES 2006

The budget amendment, in the amount of \$1,533,520.00, decreased various Fiscal Year 2008-2009 Utility Capital Improvement Projects funded with Utility System Revenue Bonds, Series 2006, as follows:

| Project Name | Budgeted in 2006 Utility Bond | Amount Needed to Finish Project | 2006 Utility Bond Decrease |
|--|-------------------------------|---------------------------------|----------------------------|
| Fort Myers – Cape Coral Potable Water Interconnect Study | \$37,725.00 | \$2,725.00 | (\$35,000.00) |
| Reclaimed Water for Veronica S. Shoemaker Boulevard | \$759,455.00 | \$290.455.00 | (\$469,000.00) |
| Veronica S. Shoemaker Boulevard North Colonial-Michigan Avenue Utilities | \$503,585.00 | \$215,000.00 | (\$288,585.00) |
| Sewer Main Replacement Phase III-C Industrial | \$731,123.00 | \$0 | (\$731,123.00) |
| US 41 Water Main Replacement from Victoria Avenue to Winkler Avenue | \$99,812.00 | \$90,000.00 | (\$9,812.00) |
| TOTAL | \$2,131,700.00 | \$598,180.00 | (\$1,533,520.00) |

NO. 9 BUDGET AMENDMENT CLOSING HARBORSIDE PARKING LOT IMPROVEMENTS CAPITAL PROJECT AND RETURNING UNUSED FUNDS TO HARBORSIDE RENEWAL AND REPLACEMENT FUND

The budget amendment, in the amount of \$404.69, closed the Harborside Parking Lot Improvements capital project and returned the unused funds to Harborside Renewal and Replacement Fund. The capital project known as Harborside Parking Lot Improvements was completed by Kraft Construction in November 2008. The project consisted of removing the internal curbing and replacing with asphalt, fixing three depressed areas which held water, and sealing and restriping the parking lot east of Harborside Event Center, 1375 Monroe Street, for \$56,595.31.

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NO. 10 BUDGET AMENDMENT CLOSING COLONIAL 24 INCH FORCE MAIN CONSTRUCTION CAPITAL PROJECT AND RETURNING UNUSED FUNDS TO UNPLEDGED SEWER IMPACT FEE AND UTILITY SYSTEM REVENUE BONDS, SERIES 2006 The budget amendment, in the amount of \$1,347,391.14, closed the Colonial 24 Inch Force Main Construction capital project and returned the unused funds in the amount of \$1,321,580.65 to Unpledged Sewer Impact Fee and \$25,810.49 to Utility System Revenue Bonds, Series 2006. The capital project known as Colonial Boulevard 24 Inch Force Main for the installation of a 24 inch sanitary sewer force main along the south side of Colonial Boulevard from Ford Street to Winkler Avenue Extension and was completed. The City received and reviewed all close out documents and City Council accepted the project on May 19, 2008. The original budget for the project was \$3,497,500.00 and the total cost of the project at completion was \$2,150,109.00.

NO. 11 LEE COUNTY MULTI JURISDICTIONAL MUTUAL AID AGREEMENT BETWEEN THE LEE COUNTY SHERIFF'S OFFICE, CITY OF FORT MYERS ON BEHALF OF ITS POLICE DEPARTMENT, CAPE CORAL POLICE DEPARTMENT, SANIBEL POLICE DEPARTMENT, FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES ON BEHALF OF ITS POLICE DEPARTMENT, AND LEE COUNTY PORT AUTHORITY FOR ASSISTANCE OF ROUTINE AND EMERGENCY LAW ENFORCEMENT SITUATIONS The Lee County Multi Jurisdictional Mutual Aid Agreement between the Lee County Sheriff's Office, City of Fort Myers on behalf of its Police Department, Cape Coral Police Department, Sanibel Police Department, Florida Gulf Coast University Board of Trustees on behalf of its Police Department, and Lee County Port Authority for the assistance of routine and emergency law enforcement situations, was effective through January 21, 2013. The Lee County Multi Jurisdictional Mutual Aid Agreement was necessary due to the existing and continuing possibility of the occurrence of law enforcement problems and man-made conditions which were, or likely to be, beyond the control of the services, personnel, equipment, or facilities of any one agency. The Lee County Multi Jurisdictional Mutual Aid Agreement would assist with routine and emergency law enforcement services to protect the public peace and safety and preserve the lives and property of people throughout Lee County.

NO. 12 FEDERALLY FUNDED SUBGRANT AGREEMENT NO. 09HM-12-09-46-02-012 FOR WIND RETROFIT PLUS ADMINISTRATION COSTS WITH THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT, PROVIDING GRANT FUNDS FOR FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT NO. 1545-147-R, EDISON & FORD WINTER ESTATES FROM FUND 199 INSURANCE PROCEEDS FROM HURRICANE CHARLEY The Federally Funded Subgrant Agreement No. 09HM-12-09-46-02-012, in the amount of \$349,827.00, for Wind Retrofit plus \$10,329.00 for administration costs, with the State of Florida, Division of Emergency Management, providing grant funds for Federal Emergency Management Agency Project No. 1545-147-R, Edison & Ford Winter Estates, 2350 McGregor Boulevard, with a 25 percent cash match in the amount of \$116,609.00 from Fund 199 Insurance Proceeds from Hurricane Charley for a total project cost in the amount of \$476,765.00 was effective September 20, 2007, through September 20, 2010. The City applied for Federal Emergency Management Agency Hazard Mitigation Grant Funds in April 2005 to fund the purchase and installation of commercial hurricane compliant shutters for doors and windows at the Edison & Ford Winter Estates to minimize future damages caused by natural disasters. The Florida Division of Emergency Management approved the obligation of the Hazard Mitigation Grant Funds. Edison & Ford Winter Estates administrative personnel would document all eligible expenditures as provided in the scope of work and submit all required quarterly and final reports and inspections.

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NO. 14 SUPPLEMENTAL TASK AUTHORIZATION NO. A2 TO PROFESSIONAL SERVICES AGREEMENT – CONTINUING CONTRACT FOR MISCELLANEOUS ENGINEERING SERVICES, REQUEST FOR QUALIFICATIONS NO. 05-10-05, WITH JOHNSON ENGINEERING, INC.

Supplemental Task Authorization No. A2, in the not-to-exceed amount of \$34,371.00, to Professional Services Agreement – Continuing Contract for Miscellaneous Engineering Services, Request for Qualifications No. 05-10-05, with Johnson Engineering, Inc. was for Fort Myers Golf Course Drainage, 3591 McGregor Boulevard. The Fort Myers Golf Course experienced standing water within the golf course playable area during the wet season. At times the standing water was sufficient to require the course to be closed for a number of days causing an economic impact. The flooding was caused by the lack of a sufficient drainage system to convey the stormwater runoff that outfalls to Carrell Canal. A project was designed and permitted to construct an interconnected pond system that discharges to Carrell Canal which was estimated at \$3,000,000 for construction. The pond system was anticipated to improve aesthetics of the course and address water quality and quantity issues. Due to the lack of funding for the project and the frequent drainage issues onsite, the improvements shall be constructed in phases. The first phase involved designing and permitting a cost effective solution to address the severe flooding issues that cause the course to be closed. The first phase shall be incorporated into the second phase which involved the construction of the interconnected pond system. Johnson Engineering, Inc. would provide design engineering services for the first phase, including but not limit to design, permitting, construction, observation, and certification of improvements.

NO. 15 AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL AUDITING SERVICES, REQUEST FOR QUALIFICATIONS NO. 1008-05, WITH CHERRY, BEKAERT & HOLLAND, L.L.P. TO AUDIT THE CLEAN WATER STATE REVOLVING FUND LOAN NO. WW66709L 01 FOR PHASE III-C, AREA 1 AND AREA 1A AND CENTRAL AND SOUTH ADVANCED WASTEWATER TREATMENT PLANT CHLORINATION/DECHLORINATION PROJECTS, AND LOAN NO. WW667130 FOR PHASE III-C AREAS 6 AND 7 UTILITY IMPROVEMENT PROJECT

Amendment No. 3, in the not-to-exceed amount of \$28,000.00, to Professional Services Agreement for Financial Auditing Services, Request for Qualifications No. 1008-05, with Cherry, Bekaert & Holland, L.L.P. to audit the Clean Water State Revolving Fund Loan No. WW66709L 01 for Phase III-C, Area 1 and Area 1A and Central and South Advanced Wastewater Treatment Plant Chlorination/Dechlorination projects, and Loan No. WW667130 for Phase III-C Areas 6 and 7 Utility Improvement Project was effective April 1, 2009, through March 31, 2010. Cherry, Bekaert & Holland, L.L.P., auditors, would audit the special purpose statement of the loan revenues and expenditures, budget and actual, of the Florida Department of Environmental Protection loans awarded to the City. The Florida Department of Environmental Protection required an audit to close out the loan. The special purpose financial statements were the responsibility of the City.

NO. 16 PROJECT CLOSE OUT AND CHANGE ORDER NO. 1 TO CONTRACT NO. 04/23/08-BID-PW, BRIDGE & CULVERT REPAIRS WITH WRIGHT CONSTRUCTION GROUP, INC.

Change Order No. 1, in the amount of \$9,412.86, to Contract No. 04/23/08-BID-PW, Bridge & Culvert Repairs with Wright Construction Group, Inc. decreased the contract amount from \$193,266.23 to \$183,853.37, and decreased contract time by 148 days to a completion date of December 17, 2008. The project was closed out and retainage, in the amount of \$18,385.34, was released. Wright Construction Group, Inc. completed all terms of the agreement and submitted close out documentation including a one year warranty and release of liens.

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NO. 17 GRANT OF 12 FOOT WIDE TEMPORARY CONSTRUCTION SIDEWALK EASEMENT FROM THE HOUSING AUTHORITY OF THE CITY OF FORT MYERS FOR A NON-EXCLUSIVE EASEMENT ALONG THE EAST SIDE OF VERONICA S. SHOEMAKER BOULEVARD BETWEEN DR. MARTIN LUTHER KING JR. BOULEVARD AND MICHIGAN AVENUE, FOR THE INSTALLATION OF PUBLIC SIDEWALKS Removed from agenda by Saeed Kazemi, Interim Public Works Director, Public Works Department, on March 10, 2009.

NO. 18 GRANT OF PUBLIC DRAINAGE EASEMENT FROM ROBERT KOHN, AN OFFICER FOR RIVERA FORT MYERS MASTER ASSOCIATION, INC., FOR A PERPETUAL AND EXCLUSIVE EASEMENT LOCATED IN LOT 3, BLOCK B, DEAN'S SUBDIVISION, MORE COMMONLY KNOWN AS 2745 FIRST STREET, BETWEEN CRANFORD AVENUE AND PALM AVENUE The Grant of Public Drainage Easement from Robert Kohn, an Officer for Rivera Fort Myers Master Association, Inc., for a 30 foot wide perpetual and exclusive easement located in Lot 3, Block B, Dean's Subdivision, more commonly known as 2745 First Street, between Cranford Avenue and Palm Avenue, was for drainage to mitigate flooding in the Dean Park neighborhood. The easement was described as follows:

Parcel in
Section 13, Township 44 South, Range 24 East
City of Fort Myers, Lee County, Florida

A strip of land thirty (30) feet wide lying in Lot 3, Block B of Dean's Subdivision as recorded in Plat Book 4, Page 24, Lee County Records, Lee County, Florida, said strip of land being more particularly described as follows:

Commencing at the most southerly corner of Lot 3, Block B, of said record plat of Dean's Subdivision run N31°52'37"W along the southwesterly line of Lot 3, Block B of said record plat for 202.94 feet to the point of beginning.

From said point of beginning run N31°52'37"W still along said southwesterly line of Lot 3, Block B for 30.00 feet; thence run N58°07'23"E for 5.00 feet; thence run S31°52'37"E for 30.00 feet; thence run S58°07'23"W for 5.00 feet to the point of beginning.

Containing 150 square feet, more or less.

Bearings hereinabove mentioned are based on the northwesterly right-of-way line of First Street of said record plat to bear S58°07'23"W.

NO. 19A MODIFICATION NO. 2 TO FEDERALLY FUNDED SUBGRANT AGREEMENT, CONTRACT NO. 08HM-F9-09-46-02-007, PROJECT NO. 1539-124-R, WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR MANUELS BRANCH WATERSHED IMPROVEMENT DRAINAGE PROJECT AND RESCIND MODIFICATION NO 2 APPROVED ON FEBRUARY 2, 2009 Modification No. 2 to Federally Funded Subgrant Agreement, Contract No. 08HM-F9-09-46-02-007, Project No. 1539-124-R, with the Florida Division of Emergency Management for Manuels Branch Watershed Improvement Drainage Project extended the completion date from October 23, 2008, to March 31, 2009, and rescinded Modification No 2 approved on February 2, 2009. The City submitted an application for the Hazard Mitigation Grant Program with the State of Florida Department of Community Affairs and the Federal Emergency Management Agency in May 2005 for drainage relief at the most appropriate location and elevations to prevent flooding in the Manuels Branch area. The

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agreement provided for a Phase I study to be conducted to determine modifications needed to improve and upgrade the existing drainage system. The deadline for submitting Phase I deliverables was October 23, 2008. The City submitted a request to Federal Emergency Management Agency on August 21, 2008, to extend the deadline to March 31, 2009, due to delays encountered during design. The extension was received from Federal Emergency Management Agency on January 23, 2009, and the contract modification was approved by City Council on February 17, 2009. The Federal Emergency Management Agency noticed an error in the contract modification on February 24, 2009, and the original contract had expired while the extension was being processed. The corrected modification once executed would reinstate the original agreement, as if it had never expired, and extended the deadline for Phase I deliverables from October 23, 2008, to March 31, 2009. The City completed the requirements of the contract with the submittal of Phase I deliverables on March 3, 2009.

NO. 19B AWARD BID NO. 77-08-09, MARION STREET FORCE MAIN IMPROVEMENTS TO DENCO CONSTRUCTION, INC. Pursuant to advertisement in the Fort Myers News Press, issues of January 16, 2009, and January 23, 2009, Affidavit of Publication on file, bids were received on February 17, 2009, in the Purchasing and Contracts Administration Division, Financial Services Department, for Bid No. 77-08-09, Marion Street Force Main Improvements. Bid tabulation and recommendation were as follows:

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Marion Street Force Main Improvements

Bid Opening Date: February 17, 2009

Bid No. 77-08-09

| Company Name | Address | Attended Pre-Bid Meeting | Document. Management Sheet | Bid Bond (Part F) | MBE PKG (Part G) | No Lobbying Affidavit (Part K) | Insurance | License | E-Verify Affidavit (Part L) | List of Subs | Addenda Receipt Sheet | Total Cost (Part C-7, from Addendum #2, Includes Sections A - D + 5% Contingency) | (Alternate Bid) |
|---------------------------|--|---------------------------------|-----------------------------------|--------------------------|-------------------------|---------------------------------------|------------------|----------------|------------------------------------|---------------------|------------------------------|--|------------------------|
| A&L Underground Inc. | 11817 E US Hwy 92, Seffner 33584 | YES | YES | YES | YES | YES | YES | YES | YES | | YES | \$2,451,407.50 | \$1,475,276.00 |
| Armadillo Underground | 2655 Rockfill Road, Fort Myers 33916 | YES | | YES | YES | YES | NO | NO | YES | YES | YES | \$2,376,624.57 | \$1,335,691.54 |
| Denco Construction | 4600 Cummin Street Fort Myers 33905 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$1,550,294.75 | \$792,311.00 |
| Gulf Coast Underground | 3093 Hunter Street Fort Myers 33916 | YES | YES | YES | YES | YES | YES | YES | YES | NO | Yes | \$1,947,282.09 | \$961,097.50 |
| Guymann Construction | 305 SW 3rd Street Cape Coral, 33991 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$2,324,095.08 | \$1,200,956.51 |
| Haleakala Construction | 5758 Taylor Road, Naples, | YES | YES | YES | YES | YES | YES | YES | YES | | YES | \$2,190,858.65 | \$1,317,881.11 |
| J.P. Murphy, Inc. | 16751 Old US 41 | YES | YES | YES | YES | YES | YES | YES | YES | NO | YES | \$2,409,476.90 | \$1,217,723.88 |

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Marion Street Force Main Improvements - Continued

Bid Opening Date: February 17, 2009

Bid No. 77-08-09

| Company Name | Address | Attended Pre-Bid Meeting | Document. Management Sheet | Bid Bond (Part F) | MBE PKG (Part G) | No Lobbying Affidavit (Part K) | Insurance | License | E-Verify Affidavit (Part L) | List of Subs | Addenda Receipt Sheet | Total Cost (Part C-7, from Addendum #2, Includes Sections A - D + 5% Contingency) | (Alternate Bid) |
|---------------------------|---|---------------------------------|-----------------------------------|--------------------------|-------------------------|---------------------------------------|------------------|----------------|------------------------------------|---------------------|------------------------------|--|------------------------|
| MAJ Contracting, Inc. | 2602 Dora Street, Fort Myers 33901 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$2,800,739.29 | \$1,395,619.10 |
| Philips & Jordan, Inc. | 8940 Gall Boulevard Zephyrhills, 33541 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$3,288,088.46 | \$1,680,794.44 |
| Southwest Utility Systems | 16341 Old US41 S, Fort Myers 33912 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$1,978,143.30 | \$1,026,282.00 |
| Stately Contractors | 6028 33rd Street. East Bradenton, 34203 | YES | YES | YES | YES | YES | YES | YES | YES | | YES | \$2,470,627.95 | \$1,316,793.00 |
| Stevens & Layton | 11260 Palm Beach Boulevard Fort Myers | YES | YES | YES | YES | YES | YES | YES | YES | | YES | \$1,761,066.32 | \$1,012,303.80 |
| Strickler Bros, Inc. | 4176 Canal Street Fort Myers 33916 | YES | YES | YES | YES | YES | YES | YES | YES | YES | YES | \$2,293,873.78 | \$1,375,003.00 |

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The Public Works Department recommended that the bid for Marion Street Force Main Improvements, in the amount of \$1,694,899.76, be awarded to Denco Construction.

MOTION FOR CONSENT AGENDA It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to approve the Consent Agenda with the exception of Item Nos. 5, 13, and 19. The same was approved as written and the various officials were authorized and directed to take such action as may be necessary to give effect to the recommendations.

ITEM REMOVED FROM CONSENT AGENDA BY COUNCILMAN LEONARDO: NO. 5 BUDGET AMENDMENT FROM FUND 106 GAS TAX FUND TO FUND 402 STORMWATER FUND Councilman Leonardo stated that the budget amendment, in the amount of \$1,951,500.00, from Fund 106 Gas Tax Fund to Fund 402 Stormwater Fund was for Fiscal Year 2008-2009 budgeted Stormwater Administration and Drainage revenues and expenses. Councilman Leonardo stated that funds were provided by the State for money collected for Gas Tax. William P. Mitchell, City Manager, stated that the name of the Gas Tax Fund was a misnomer because it reflected the source of the funding. Mr. Mitchell stated that the money was utilized for stormwater management services, cleaning ditches, cleaning canals, and providing funds for capital improvements for stormwater drainage. It was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to approve the budget amendment, in the amount of \$1,951,500.00, from Fund 106 Gas Tax Fund to Fund 402 Stormwater Fund for Fiscal Year 2008-2009 budgeted Stormwater Administration and Drainage revenues and expenses.

ITEM REMOVED FROM CONSENT AGENDA BY COUNCILMAN LEONARDO: NO. 13 PROFESSIONAL SERVICES AGREEMENT WITH ROBINSON, STAFFORD & RUDE, INC. FOR VALUE ENGINEERING SERVICES FOR REVIEW OF THE EAST WATER RECLAMATION FACILITIES, REQUEST FOR QUALIFICATIONS NO. 07/09/08-RFQ-PW Councilman Leonardo stated that the Professional Services Agreement, in the amount of \$132,168.00, with Robinson, Stafford & Rude, Inc. for Value Engineering Services for Review of the East Water Reclamation Facilities, Request for Qualifications No. 07/09/08-RFQ-PW, was effective for 6 months. Councilman Leonardo stated that Robinson, Stafford & Rude, Inc. would conduct value engineering workshops with the City and design consultant that were consistent with the practices and procedures recognized by SAVE International. William P. Mitchell, City Manager, stated that approximately \$1,300,000.00 had been spent on the project. Mr. Mitchell stated that the funds were to identify ways to make changes in the design and engineering to decrease the price of the project. It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried to approve the Professional Services Agreement, in the amount of \$132,168.00, with Robinson, Stafford & Rude, Inc. for Value Engineering Services for Review of the East Water Reclamation Facilities, Request for Qualifications No. 07/09/08-RFQ-PW, effective for 6 months.

ITEM REMOVED FROM CONSENT AGENDA BY COUNCILMAN FLANDERS: NO. 19 SCULPTURE CREATED BY DAVID BLACK, ARTIST, FOR PLACEMENT IN EDISON PLAZA, CENTENNIAL PARK UTILIZING FUNDS FROM THE PUBLIC ART FUND Councilman Flanders stated that the sculpture, Fire Dance, in the amount of \$100,000.00, created by David Black, artist, for placement in Edison Plaza, Centennial Park, 2000 West First Street, utilized funds from the Public Art Fund. Councilman Flanders stated that the Public Art Committee selected artist David Black to receive a \$100,000.00 commission to create a public sculpture in Centennial Park. Councilman

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Flanders stated that the \$100,000.00 was donated from developers that applied for building permits to construct or reconstruct a structure with a value of \$250,000.00 or more, and taxpayer funds were not being spent. Councilman Flanders stated that the sculpture would be placed in the area of Centennial Park known as Edison Plaza where it would be visible from West First Street, Bay Street, and the Caloosahatchee Bridge. Councilman Flanders stated that the expense to remove the palm tree should be kept to a minimum. Councilman Flanders stated that lighting should be considered by the artist. Jeff Mudgett, Chairman, Public Art Committee, stated that a call to artists was made for a \$100,000.00 sculpture. Mr. Mudgett stated that there was a separate budget for extraneous expenses such as moving as landscape and lighting. Mr. Mudgett stated that Public Art Committee considered the sculpture as being lighted. Mr. Mudgett stated that the sculpture was chosen because it would have a monumental impact during the day and artificially light at night. Mr. Mudgett stated that there were no specifics on the lighting. Mayor Humphrey stated that the public announcement should indicate that taxpayer funds were not being expended. Mayor Humphrey stated that it was important for the Public Art Committee to take a major role in the selection of public art. It was moved by Councilman Flanders, seconded by Councilman Henderson and unanimously carried to approve the sculpture, Fire Dance, in the amount of \$100,000.00, created by David Black, artist, for placement in Edison Plaza, Centennial Park, 2000 West First Street, utilizing funds from the Public Art Fund.

NO. 20 PUBLIC HEARING: SECOND READING - ORDINANCE NO. 3505 REZONING FROM MIXED USE TO PLANNED UNIT DEVELOPMENT AND THE DEVELOPMENT PLAN FOR FRANK HELMERICH FOR THE FRANK HELMERICH II TRUST AS REQUESTED BY FRANK HELMERICH FOR THE FRANK HELMERICH II TRUST (QUASI-JUDICIAL) Pursuant to advertisement in The News Press, issue of March 5, 2009, Affidavit of Publication on file, a public hearing was held at this time on rezoning from mixed use to planned unit development and the development plan for Frank Helmerich for the Frank Helmerich II Trust, 10631-10681 Colonial Boulevard, located east of Interstate 75, on the northeast corner of Colonial Boulevard and the future extension of Treeline Avenue as requested by Frank Helmerich for the Frank Helmerich II Trust. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the second reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3505

AN ORDINANCE
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, APPROVING REZONING FROM MIXED USE TO PLANNED UNIT DEVELOPMENT AND THE DEVELOPMENT PLAN FOR FRANK HELMERICH FOR THE FRANK HELMERICH II TRUST PLANNED UNIT DEVELOPMENT, 10631-10681 COLONIAL BOULEVARD, IN SECTION 26, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Humphrey stated that the property was described as follows:

A tract or parcel of land lying in the Southeast Quarter (S.E. ¼) of Section 26, Township 44 South, Range 25 East, Lee County, Florida, described as follows:

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Commencing at the southwest corner of the Southeast Quarter (S.E. ¼) of the aforesaid Section 26; thence run S.89°38'20"E. along the south line of said Section 26 for 460.76 feet; thence run N.00°21'40"E. for 125.00 feet to a point on the north right-of-way line of Colonial Boulevard (State Route 884 – 250 feet wide) and the point of beginning; thence continue N.00°21'40"E. for 100.00 feet to a point of curvature; thence run northeasterly for 276.34 feet along the arc of a curve concave southeasterly, with a radius of 1,025.00 feet, a delta of 15°26'48", a chord bearing of N.08°05'04"E. and a chord distance of 275.50 feet; thence run S.89°38'20"E. (not radial to the previously described line) for 622.98 feet; thence run S.00°21'40"W. for 373.00 feet to a point on the north right-of-way line of said Colonial Boulevard; thence run N.89°38'20"W. along said north right-of-way line for 660.00 feet to the point of beginning.

Said tract contains 5.574 acres, more or less, and is subject to easements, restrictions, and reservations of record.

Bearings are based on the south line of the Southeast Quarter (S.E. ¼) of the aforesaid Section 26 as being S.89°38'20"E.

Councilman Leonardo stated that he met with Mike Roeder and Greg Rosario on Tuesday, January 20, 2009, and discussed various issues of the planned unit development, its effect on potential traffic, expansion of State Road 82, and that one of the uses for the property may be a church. Councilman Leonardo stated that a church was permitted on the site under Code. Councilman Henderson stated that he met with Mike Roeder and discussed the site and changes and the fact that a church might surface as a feasible use for the site. Councilman Flanders stated that he met with Mike Roeder and received the general intent of the ordinance and talked in general descriptions of the project. Mayor Humphrey stated that he had 2 meetings with Mr. Roeder to review the planned unit development and issues such as the road extension of Treeline Avenue, the Planning Board recommendations and the issues regarding the wetlands and the Comprehensive Plan. Mayor Humphrey stated that the overall permitted uses were discussed. Mayor Humphrey stated that all meetings were within the last 3 weeks, last week a meeting was held briefly and approximately 3 weeks ago. Councilman Simms stated that he meet to be advised that the owners were coming forward. Councilman Simms stated that there was not a lot of detail in the particulars. Councilman Streets stated that he did not think he met with the developers but if he did it was brief in regards to the location. Councilman Wright stated that he had no exparte communication on the planned unit development and the development plan for Frank Helmerich for the Frank Helmerich II Trust. Marie Adams, CMC, City Clerk, administered the oath to those persons who would give testimony during the quasi-judicial public hearing. Mike Roeder, representative, Frank W. Helmerich, Trustee, stated that the 5.57 acre, more or less, parcel at the northeast corner of Colonial Boulevard and the future extension of Treeline Avenue. Mr. Roeder stated that he met with Council Members on February 17, 2009, when there was a permission to advertise and made them aware of the project. Mr. Roeder stated that the subject property was surrounded by a future stormwater pond which Lee County purchased for a retention site for widening Colonial Boulevard to six lanes which was important in terms of the deviation request. Mr. Roeder stated that the future extension of Treeline Avenue was on the west side of the property north to State Road 82. Mr. Roeder stated that there was a traffic light at the intersection and a short section of Treeline Avenue and a turn lane from Colonial Boulevard into the site. Mr. Roeder stated that it was long anticipated that there would be

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development in the area. Mr. Roeder stated that the west side of Treeline Avenue was the Cambridge Planned Unit Development which was in process by the City. Mr. Roeder stated that the Six Mile Cypress Slough was west of the property. Mr. Roeder stated that the property was designated Mixed Use on the Future Land Use Map which required a planned unit development. Mr. Roeder stated that the planned unit development zoning required a site plan. Mr. Roeder stated that the proposed site plan included a convenience store with gas pumps, a motel, and a small strip center behind a water detention pond. Mr. Roeder stated that the site plan had been under review for a water management permit for the better part of a year. Mr. Roeder stated that the site plan included access from Colonial Boulevard and from Treeline Avenue Extension. Mr. Roeder stated that a specific list of uses was submitted as outlined in the ordinance and there was disagreement on 3 uses. Mr. Roeder stated that churches were one of the areas of disagreement. Mr. Roeder stated that it was not appropriate for the City to deny the ability to locate a church on the property. Mr. Roeder stated that a church would encompass the entire site requiring a redesign of the property. Mr. Roeder stated that schools and passive recreation were possibilities. Mr. Roeder stated that the school would be private or technical, not public, and was a reasonable use. Mr. Roeder stated that the passive recreation connected the site plan when people were staying in the motel and included a gazebo where people could congregate to eat. Mr. Roeder stated that the ordinance contained 20 conditions. Mr. Roeder stated that there was a disagreement with the City on specific uses and place of worship, schools, and passive recreation should be added to Section 5. and Section 7.(a) in the ordinance. Mr. Roeder stated that Section 7.(d) of the ordinance referred to Policy 2.16.2.1 which resulted in a plan amendment to show pedestrian interconnections in the passive recreation area. Mr. Roeder stated that the applicant acknowledged if different uses altered the plan to a significant degree regarding off-site impact, a new plan would be submitted and reviewed. Mr. Roeder stated that if the amendments were significant they could be heard at a public hearing. Mr. Roeder stated that the plan was under review by the South Florida Water Management District and would remain the same. Mr. Roeder stated that Section 7. (l) of the ordinance provided for a subdivision plat and separate parcels were not proposed. Mr. Roeder stated that Section 7. (q) required \$50,000.00 for highway beautification for Treeline Avenue and Colonial Boulevard. Mr. Roeder stated that there was no citation in the regulations or formula to justify the \$50,000.00 payment. Mr. Roeder stated that the financial burden was not reasonable due to the economic climate. Mr. Roeder stated that Section 7.(r) of the ordinance provided for public art which was supposed to be voluntary but the ordinance required fine art to be placed on the development site and it was unclear what art could be placed on the 5 acre site on the eastern fringes of the City. Mr. Roeder stated that the public art requirement did not fit the property and should be reviewed. Mr. Roeder stated that the public art requirement was an economic burden to the developer. Mr. Roeder stated that the Planning Board voted 4 to 3 to deny approval based on the one policy in the plan regarding preserving wetlands. Mr. Roeder stated that Passarella & Associates, environmental consultant, representing the developer, provided that given the location of the property with roads on 2 sides and the Lee County future stormwater pond on the other 2 sides the parcel was not a viable wetland. Mr. Roeder stated that the South Florida Water Management District indicated the wetlands could be impacted with off-site mitigation. Mr. Roeder stated that the City should work with the South Florida Water Management District and recognize the site was not a viable wetland worth protecting. Mr. Roeder stated that the parcel was not what the ordinance contemplated when preserving wetlands. Mr. Roeder stated that there were no renderings of the buildings because the final user had not been determined. Mr. Roeder stated that the appropriate time to provide renderings was upon submission of approval of the site approval and a user had been identified. Robert Gardner,

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Director, Community Development Department, stated that the employees had not walked the property. Mr. Gardner stated that the employees had driven by the property and aerial maps were reviewed. Councilman Leonardo stated that any property for development in Ward 6 should be walked. Councilman Leonardo stated that a frontage road was not needed because no other things would be served. Councilman Leonardo stated that the ordinance required a sidewalk to be constructed along the property on Colonial Boulevard and Treeline Avenue at the time of site work permits which was not necessary. Mr. Gardner stated that requiring the installation of sidewalks at the time site work permits were issued was a traditional means of getting sidewalks. Mr. Gardner stated that there were areas in the City that there may have been an opportunity for installation of a sidewalk and with the opportunity gone the City had to pay for the sidewalk. William P. Mitchell, City Manager, stated that consideration could be given to mitigation for sidewalks in planned unit development to construct sidewalks in areas where sidewalks were needed. Mr. Gardner stated that the property was zoned for mixed use and anytime zoning was changed to something more specific such as a planned unit development a review should be completed on what was being recommended. Mr. Gardner stated that renderings or architectural guidelines assist in knowing what was being proposed. Mr. Gardner stated that sites should not be recommended for approval without reasonably knowing the development possibilities. Mr. Gardner stated that a criterion of the planned unit development process was a public art element. Mr. Gardner stated that architectural would be required later in the process. Mr. Gardner stated that information on what the parcel might look like was required for planning and land use considerations. Mr. Gardner stated that when actual development plans were submitted there should be a unifying theme. Councilman Leonardo stated that the planned unit development ordinance should contain a provision that when a decision was made on the development, specific plans with elevations would be required. Councilman Simms stated that public art was necessary, even if not on site. Councilman Simms stated that the public art element of the ordinance should not be eliminated. Mr. Gardner stated that churches, passive recreation, and schools were not recommended because of foreclosures and economy. Mr. Gardner stated that one of the reasons Fort Myers was spared was because of the mix of commercial and industrial lands to go with housing. Mr. Gardner stated that the corner of Treeline Avenue and Colonial Boulevard would have ideal traffic and establishing a use with no return for the tax dollars was not appropriate. Mr. Gardner stated that the City needed a balance of commercial and industrial. Councilman Wright stated that the Planning Board did not make the decision to deny the rezoning and development plan lightly and they needed an opportunity to review the response of the developer. Councilman Wright stated that the Six Mile Cypress Slough had been jeopardized by the development, deviations, and variances were allowed to the point where the water quality has been determined to be a Grade F. Councilman Wright stated that the water quality was entering Estero Bay which was dead by most biologists accounts. Councilman Wright stated that a note about how the City would require confirmation of mitigation of the wetlands on different sites was not sufficient. Councilman Wright stated that the City Code contained requirements for littoral plantings and an adjustment of the ecosystem as it went to the depths that were not enforced or reviewed. Mayor Humphrey stated that the Pelican Preserve Shopping Center was located across the road on Colonial Boulevard. Mayor Humphrey stated that the intersection was an important place for public art or an art feature. Mayor Humphrey stated that the applicant was not the end user and the City needed to be more precise, review the uses relating to the environment, and consider the Planning Board recommendation. Mayor Humphrey stated that there was a condition in the planned unit development ordinance for specific site and design and the employees expressed why the other uses were appropriate. Mayor Humphrey stated that churches need 5 acres and a

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school would need more acreage. Mayor Humphrey stated that City Council needed to review a design for schools that related to traffic and school bus stops. Mayor Humphrey stated that a traffic design for churches would also be needed. Mr. Roeder stated that the property immediately surrounding the site and the property to the east was purchased by Lee County for the 2020 Program. Mayor Humphrey stated that Lee County would want a bike path or sidewalk along a major east-west roadway. Mayor Humphrey stated that property should be designated for a sidewalk. Mr. Roeder stated that the size of the buffer was 15 feet. Grant W. Alley, City Attorney, stated that the buffer was a Type D and the applicant requested a deviation of no frontage road. Attorney Alley stated that the landscape requirement was requested because of no frontage road. Mayor Humphrey stated that the City tried to be consistent with developments in the area. Mayor Humphrey stated that Treeline Avenue was an opportunity to have a north-south road that was well landscaped, beautified, and an enhancement of the area. Mayor Humphrey stated that the City should not be limited by 15 feet of buffer area. Mayor Humphrey stated that there was a concern when the Planning Board denied an application. Mr. Roeder stated that the property was under jurisdiction of the United States Army Corps of Engineers. Mayor Humphrey stated that from an environmental point of view, it was a concern to approve the planned unit development despite the recommendation for denial by the Planning Board. Mayor Humphrey stated that a frontage road was not required but sidewalks should be considered. Mayor Humphrey stated that it was appropriate that building permits not be issued until the applicant and City entered into a Development Agreement pursuant to Chapter 163.3221, Florida Statutes. Mayor Humphrey stated that there was a concern regarding the right-of-way from Colonial Boulevard to the property particularly if the property to the west removed their planned unit development. Mayor Humphrey stated that an arterial or collective road system was scheduled for the area. Mayor Humphrey stated that the right-of-way treatment was important. Mayor Humphrey stated that sidewalks would be required if a church was constructed on the property. Mayor Humphrey stated that time was not of the essence if there was a condition that changes to the planned unit development would require review by the City. Mayor Humphrey stated that the Planning Board should review the environmental issues. Mayor Humphrey stated that the 5 acre site was an important piece of property at an important intersection. Mayor Humphrey stated that the plan and setbacks should be done as well as possible. Mayor Humphrey stated that there was a valid basis for the request for assistance in landscaping. Mayor Humphrey stated that the funds for landscaping would be expended to enhance the property. Councilman Flanders stated that the Planning Board indicated that there was not sufficient testimony by the applicant regarding the determination of the South Florida Water Management District and issues that the wetland could be filled for development. Councilman Flanders stated that the Comprehensive Plan provided that the City shall recognize wetland reviews performed by the South Florida Water Management District. Councilman Flanders stated that City employees and the applicant at the time the Planning Board voiced their concerns indicated that the project was subject to regulatory review which was being conducted simultaneously with the review by the City. Councilman Flanders stated that confirmation of the disposition of wetlands by the South Florida Water Management District, Federal Department of Environmental Protection, and United States Army Corps of Engineers must be received prior to the issuance of site work permits. Councilman Flanders stated that the applicant understood that the South Florida Water Management District permit review had not been completed and was being done simultaneous and permits would not be issued without the approval of the South Florida Water Management District. Mayor Humphrey stated that the United States Army Corps of Engineers permit must be received. Councilman Flanders stated that the concern of the Planning Board was that the reviews by the South Florida

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Water Management District, Federal Department of Environmental Protection, and United States Army Corps of Engineers had not been completed. Saeed Kazemi, Interim Director, Public Works Department, stated that Lee County acquired land around the property for water retention and permits from United States Army Corps of Engineers had been received. Mr. Kazemi stated that the bid for the expansion of Colonial Boulevard was opened by Lee County. Mr. Kazemi stated that the Colonial Boulevard expansion would remain within the existing 200 foot right-of-way. It was moved by Councilman Leonardo, seconded by Councilman Wright to deny the ordinance and send it back to the Planning Board for further review. Mayor Humphrey stated that instead of denying the ordinance, it should be continued for a couple of months to allow time for review by the Planning Board. It was moved by Councilman Leonardo, seconded by Councilman Wright to amend the motion to deny the ordinance and send it back to the for further review to continue the public hearing to May 18, 2009, and send the ordinance back to Planning Board for review with updated information. Mr. Roeder stated that there was no objection to the sidewalks. Mr. Roeder stated that the ordinance contained specific language requiring architectural compatibility and review and the developer had a detailed landscaping plan. Mr. Roeder stated that the issue was the wetlands. Mr. Roeder stated that the Planning Board took exception to the idea that the City was bound by the South Florida Water Management District approval. Mr. Roeder stated that the Planning Board thought the policy provided that the City was bound by the delineation and definition of wetlands but not the approval to permit by the South Florida Water Management District. Mr. Roeder stated that the location did not contain viable wetlands. Mr. Roeder stated that the Planning Board recommendation would leave the property vacant. Mr. Roeder stated that there was a concern with reconciling 4 to 3 decision by the Planning Board with reasonable development of the site. Councilman Leonardo stated that City employees need to walk the property. Mr. Roeder stated that a second response to the United States Army Corps of Engineers would be submitted within the next 2 weeks and final details of mitigation and site design were being debated. It was moved by Councilman Leonardo, seconded by Councilman Wright to continue the public hearing to May 18, 2009, and return the ordinance to Planning Board and request the applicant to provide the Planning Board with updated information as necessary and the applicant to consider the other issues presented. There being no one else present to be heard, after due consideration, a roll call vote was taken as follows: Councilman Wright – Aye Councilman Streets – Aye, Councilman Simms – Aye, Councilman Flanders – Aye, Councilman Henderson – Aye, Councilman Leonardo – Aye, and Mayor Humphrey – Aye. Motion was unanimously carried.

The meeting recessed at 6:11 o'clock p.m.

The meeting reconvened at 6:24 o'clock p.m.

NO. 21 PUBLIC HEARING: SECOND READING - NO. 3506 AMENDING CITY CODE CHAPTER 90, STORMWATER MANAGEMENT BY PROVIDING REGULATIONS FOR STORMWATER MANAGEMENT AND A METHOD OF COLLECTION OF STORMWATER MANAGEMENT FEES

Pursuant to advertisement in The News Press, issue of March 5, 2009, Affidavit of Publication on file, a public hearing was held at this time on amending City Code Chapter 90, Stormwater Management by providing regulations for stormwater management and a method of collection of stormwater management fees. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the second reading an ordinance as hereinafter set out entitled:

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ORDINANCE NO. 3506

AN ORDINANCE

To be entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 90, UTILITIES, ARTICLE VI, STORMWATER MANAGEMENT; DIVISION 1. IN GENERAL, SECTION 90-181 DEFINITIONS; DIVISION 2. STORMWATER ASSESSMENTS, AMENDING SECTION 90-201 BY DELETING COMPUTATION AND CREATING ESTABLISHMENT OF STORM WATER FEE; AMENDING SECTION 90-203 METHOD OF COLLECTION; DIVISION 3. DETERMINATION OF EQUIVALENT RESIDENTIAL UNITS, AMENDING SECTION 90-221 BY DELETING TAX PARCEL CLASSIFICATIONS AND CREATING DETERMINATION OF STANDARD IMPERVIOUS UNITS; AMENDING SECTION 90-222 BY DELETING SINGLE FAMILY PARCELS AND CREATING CALCULATION OF STORMWATER FEES; DELETING SECTION 90-223 DUPLEX PARCELS; RENUMBERING AND AMENDING SECTION 90-228 BY DELETING MITIGATION CREDIT POLICY AND CREATING REDUCTION IN STORMWATER FEES; AMENDING SECTION 90-224 BY DELETING RESIDENTIAL CONDOMINIUM PARCELS AND CREATING ADJUSTMENT OF FEES; DELETING SECTION 90-225 NONRESIDENTIAL CONDOMINIUM PARCELS; SECTION 90-226 MIXED USE CONDOMINIUM PARCELS; SECTION 90-227 GENERAL PARCELS; AND SECTION 90-229 PRIVATE STORM WATER MANAGEMENT FACILITIES; AMENDING DIVISION 4. IMPLEMENTATION, SECTION 90-251 STORMWATER UTILITY FEE; RATE RESOLUTION; DELETING SECTION 90-252 PREPARATION AND CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL TO TAX COLLECTOR; AMENDING SECTION 90-253 ANNUAL STORMWATER UTILITY ASSESSMENT COLLECTION AND ENFORCEMENT; DELETING SECTION 90-254 SEPARATELY PREPARED NOTICE OF ANNUAL STORMWATER UTILITY ASSESSMENT NOTICE; AMENDING SECTION 90-255 CORRECTION OF ERRORS AND OMISSIONS; ADJUSTMENTS; PETITION TO CITY COUNCIL; DELETING SECTION 90-256 FAILURE TO INCLUDE REAL PROPERTY ON ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; AND SECTION 90-257 APPLICABILITY OF STORMWATER UTILITY ASSESSMENT TO TAX-EXEMPT REAL PROPERTY; CREATING SECTION 90-259 EXEMPTIONS AND EXCLUSIONS APPLICABLE TO STORMWATER FEES; AMENDING DIVISION 6. GENERAL PROVISIONS, BY DELETING SECTION 90-321 ADJUSTMENT OF EQUIVALENT RESIDENTIAL UNITS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Councilman Flanders stated that the limited definition of impervious remained in the ordinance and Section 7.(a)(5) provided as follows:

A credit for incorporating best management practices, such as porous pavement, rain gardens, and stormwater recycling, is available to parcels within the city limits . . .

Saeed Kazemi, Interim Director, Public Works Department, stated that there were numerous pavements that were porous and the City did not want to specify the particular types. Mr. Kazemi stated that the Policy

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for Adjustments of Stormwater Fees would specify porous pavements and credits would be based on the square footage of material used. Mr. Kazemi stated that calculation would be based on square footage of porous material, type of material, and kind of credit that could be given based on materials. Mr. Kazemi stated that the water quality or water improvements provided by the material would be considered. Mr. Kazemi stated that the Policy for Adjustments of Stormwater Fees would be available in the Office of City Clerk for public view. Councilman Flanders stated that the public and City Council should know the kind of credit to be received. Grant W. Alley, City Attorney, stated that the ordinance could contain language referring to the latest edition of the regular published material. Attorney Alley stated that a definition was added for porous material in Section 90-181 of the ordinance. Attorney Alley stated that the Policy for Adjustments of Stormwater Fees could be referenced, the title of the ordinance would not change and if a new addition of the policy was published the ordinance would not have to be revised. Attorney Alley stated that that the ordinance could be approved without going through the entire assessment process but there were requirements for amending an ordinance such as notice and permission to advertise. Mr. Kazemi stated that a quarterly update of the revenue would be a fair assessment of the annual revenue because the fee would be included in the utility bill. Marie Adams, CMC, City Clerk, stated that Section 90-181 included a definition for Policy for Adjustments of Stormwater Fees as follows:

Policy for Adjustments of Stormwater fees means a procedural manual which shall be used by the stormwater utility director to review applications for adjustments and reduction in stormwater fees. A copy, as may be amended from time to time, is on file in the city clerk's office.

There being no one else present to be heard, it was moved by Councilman Leonardo and seconded by Councilman Flanders to adopt the ordinance. After due consideration, a roll call vote was taken as follows: Councilman Wright – Aye Councilman Streets – Aye, Councilman Simms – Aye, Councilman Flanders – Aye, Councilman Henderson – Aye, Councilman Leonardo – Aye, and Mayor Humphrey – Aye. Motion was unanimously carried. The ordinance was adopted at 6:37 o'clock p.m.

NO. 22 PUBLIC HEARING: SECOND READING – RESOLUTION NO. 2009-11 ESTABLISHING A STORMWATER FEE Pursuant to advertisement in The News Press, issue of March 5, 2009, Affidavit of Publication on file, a public hearing was held at this time on establishing a stormwater fee in the amount of \$0.96 per Standard Impervious Unit which is equal to 500 square feet of impervious surface for each tax parcel. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2009-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, ESTABLISHING A STORMWATER FEE AND PROVIDING FOR AN EFFECTIVE DATE.

There being no one present to be heard, it was moved by Councilman Leonardo and seconded by Councilman Flanders to adopt the resolution. After due consideration, a roll call vote was taken as follows: Councilman Wright – Aye Councilman Streets – Aye, Councilman Simms – Aye, Councilman Flanders – Aye, Councilman Henderson – Aye, Councilman Leonardo – Aye, and Mayor Humphrey – Aye. Motion was unanimously carried. The resolution was adopted at 6:39 o'clock p.m.

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NO. 23 PUBLIC HEARING: RESOLUTION NO. 2009-12 APPROVING AMENDMENT NO.2 TO THE STATE HOUSING INITIATIVE PARTNERSHIP LOCAL HOUSING ASSISTANCE PLAN AS REQUIRED BY THE FLORIDA HOUSING FINANCE CORPORATION FOR FISCAL YEARS 2007-2008, 2008-2009, AND 2009-2010 Pursuant to advertisement in The News Press, issue of February 9, 2009, Affidavit of Publication on file, a public hearing was held at this time on Amendment No.2 to the State Housing Initiative Partnership Local Housing Assistance Plan as required by the Florida Housing Finance Corporation for Fiscal Years 2007-2008, 2008-2009, and 2009-2010. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2009-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, APPROVING THE AMENDMENT NO.2 TO THE LOCAL HOUSING ASSISTANCE PLAN AS REQUIRED BY THE STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM ACT, SUB-SECTIONS 420.907 THROUGH 420.9079, FLORIDA STATUTES; AND RULE CHAPTER 67-37, FLORIDA ADMINISTRATIVE CODE; AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE ANY NECESSARY DOCUMENTS AND CERTIFICATIONS NEEDED BY THE STATE; AUTHORIZING THE SUBMISSION OF THE LOCAL HOUSING ASSISTANCE PLAN FOR REVIEW AND APPROVAL BY THE FLORIDA HOUSING FINANCE CORPORATION; AND PROVIDING FOR AN EFFECTIVE DATE.

There being no one present to be heard, it was moved by Councilman Streets and seconded by Councilman Henderson to adopt the resolution. After due consideration, a roll call vote was taken as follows: Councilman Wright – Aye Councilman Streets – Aye, Councilman Simms – Aye, Councilman Flanders – Aye, Councilman Henderson – Aye, Councilman Leonardo – Aye, and Mayor Humphrey – Aye. Motion was unanimously carried. The resolution was adopted at 6:40 o'clock p.m.

NO. 24 PUBLIC HEARING: ACQUISITION OF 1350 BROOKHILL DRIVE, BROOKHILL SUBDIVISION 2ND ADDITION FROM WILLIE MCDANIEL AND BETTY MCDANIEL Pursuant to advertisement in The News Press, issue of March 5, 2009, Affidavit of Publication on file, a public hearing was held at this time on the acquisition of 1350 Brookhill Drive, Brookhill Subdivision 2nd Addition, in the amount of \$28,000.00, plus attorney costs and closing fees, from Willie McDaniel and Betty McDaniel, for the installation of 2 stormwater treatment boxes to treat stormwater before entering Billy Creek. Mayor Humphrey stated that the property was described as follows:

Lot 105, Brookhill Subdivision, 2nd Addition, Plat Book 13,
Page 34, Strap No. 18-44-25-P2-01300.1050.

There being no one present to be heard, it was moved by Councilman Wright and seconded by Councilman Streets to approve the acquisition of 1350 Brookhill Drive, Brookhill Subdivision 2nd Addition, in the amount of \$28,000.00, plus attorney costs and closing fees, from Willie McDaniel and Betty McDaniel. After due consideration, a roll call vote was taken as follows: Councilman Wright – Aye Councilman Streets – Aye, Councilman Simms – Aye, Councilman Flanders – Aye, Councilman Henderson – Aye, Councilman Leonardo – Aye, and Mayor Humphrey – Aye. Motion was unanimously carried.

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NO. 25 SECOND PUBLIC HEARING: FIRST AMENDED DEVELOPER AGREEMENT WITH KEYSTONE CREEK, LLC Pursuant to advertisement in The News Press, issue of March 6, 2009, Affidavit of Publication on file, the second public hearing was held at this time on the First Amended Developer Agreement with Keystone Creek, LLC, for an anticipated residential, retail/office commercial development, formerly known as Heritage Lakes, to modify the location of drainage parcels, reduce the amount of anticipated development vested for concurrency and impact fees, and reduce the proportionate share for the landowner for traffic mitigation on State Road 82. Saeed Kazemi, Interim Director, Public Works Department, stated that the second public hearing should be continued to April 6, 2009, to ensure the exhibits were filed and a complete set provided for City Council review. Mr. Kazemi stated that the exhibits were being compiled. There being no one else present to be heard, it was moved by Councilman Flanders, seconded by Councilman Leonardo and unanimously carried to continue the second public hearing to April 6, 2009, on or about 5:15 o'clock p.m. in the City Council Chambers.

NO. 26 SECOND PUBLIC HEARING: FIRST AMENDED DEVELOPER AGREEMENT WITH C-HACK, LLC Pursuant to advertisement in The News Press, issue of March 6, 2009, Affidavit of Publication on file, the second public hearing was held at this time on the First Amended Development Agreement with C-Hack, LLC for an anticipated residential, retail/office commercial development, formerly known as Heritage Lakes, to modify the location of drainage parcels, reduce the amount of anticipated development vested for concurrency and impact fees, and reduce the proportionate share for the landowner for traffic mitigation on State Road 82. There being no one present to be heard, it was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to continue the second public hearing to April 6, 2009, on or about 5:15 o'clock p.m. in the Council Chambers.

Councilman Henderson left the meeting at 6:45 o'clock p.m.

NO. 27 UPDATE ON HOME OWNERSHIP RESOURCE CENTER AND FORECLOSURE INFORMATION Removed from agenda by Councilman Streets on March 10, 2009.

NO. 27A MINORITY BUSINESS ENTERPRISE PROGRAM Councilman Streets stated that Ordinance No. 3126 referred to Minority Business Enterprises, Disadvantage Business Enterprises, and Women Business Enterprises and should be considered for updates. Councilman Streets stated that Ordinance No. 3126 provided for a goal of 15 percent participation by Minority Business Enterprises, Disadvantage Business Enterprises, and Women Business Enterprises. Councilman Streets stated that Ordinance No. 3126 provided for Minority Business Enterprises, Disadvantage Business Enterprises, and Women Business Enterprises could receive 100 percent of a contract. Councilman Streets stated that sustained 15 percent or more had been omitted from Ordinance No. 3126. Councilman Streets stated that after requirements of the goal had been met the minority business disappeared. Councilman Streets stated that the ordinance should provide that sustained meant from the beginning to the end of a contract.

Councilman Henderson returned to the meeting at 6:48 o'clock p.m.

Tom Scott, Director, Southwest Florida Enterprise Center, stated that the general contractor for the Southwest Florida Enterprise Center in 2007 called for a general information meeting and contacted all businesses on the Certified Minority Contractor list maintained by the Small Business Development Center, Florida Gulf Coast University. Mr. Scott stated that over 40 minority contractors attended the meeting to discuss the preliminary scope of the work at the Southwest Florida Enterprise

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Center. Mr. Scott stated that there were 3 minority contractors that picked up plans and 1 minority contractor submitted a bid. Mr. Scott stated that there was a concern about the lack of minority participation for the Southwest Florida Enterprise Center. Mr. Scott stated that a Minority Contractors Association was created for the purpose of education using the Southwest Florida Enterprise Center to hold the meeting. Mr. Scott stated that notices were posted and 3 minority contractor, Tor Ostensen, Diversified Business Enterprise Coordinator, Roger Smith, partner, Parker, Mudgett, Smith Architects, Inc. attended to create an educational opportunity for minority contractors. Mr. Scott stated that minority businesses need to be certified and qualified. Mr. Scott stated that bonding, insurance, and the initial mobilization money were issues. Mr. Scott stated that another meeting was scheduled and no one attended. Mr. Scott stated that there was a need for knowledge on the part of the minority contractors on how to become part of the process. Mr. Scott stated that the Southwest Florida Enterprise Center was available and he would facilitate the meeting. Councilman Streets stated that Ordinance No. 3126 did not provide for Minority Business Enterprises, Disadvantage Business Enterprises, and Women Business Enterprises from other areas. Councilman Streets stated that all minority businesses had an opportunity to pursue contracts. Councilman Flanders stated that regardless of the business an automatic sustainability on the job should not occur if there was a default in performance or work or the specifications or standards were not met. Councilman Flanders stated that businesses should be sustained as long as the qualifications, specifications, and regulatory parts of the contract were being met. Councilman Streets stated that once a minority business completed their portion of the contract and it passed inspections, there was no need to retain them on the contract. No action was taken.

NO. 27B UPDATE REGARDING AIRSIDE PLAZA DEVELOPMENT OF REGIONAL IMPACT BY ED GARCIA, WATERMEN PINNACLE, INC., FOR POSSIBLE LOCATION OF THE BOSTON RED SOX SPRING TRAINING FACILITY Mayor Humphrey stated that Airside Plaza Development of Regional Impact, owned by Ed Garcia, Watermen Pinnacle, Inc., was chosen as one of four possible locations for the new Boston Red Sox Spring Training Facility. Mayor Humphrey stated that Lee County indicated that Resolution No. 2009-9 was not sufficient in providing that the City would work with Lee County. Mayor Humphrey stated that Lee County wants evidence that City Council would de-annex Airside Plaza if the site was selected. Mayor Humphrey stated that the property would not be de-annexed if it was not selected as the site for the Boston Red Sox Spring Training Facility which was consistent with the Annexation Agreement. Mayor Humphrey stated that language should be provided by the attorneys for a resolution that if the site was selected as Boston Red Sox Spring Training Facility the City would immediately commence procedures for de-annexation utilizing procedures set forth in Florida Statutes. Mayor Humphrey stated that the agreement to de-annex was important for the site to be selected and it would benefit the City. Russell Schropp, Esquire, Henderson Franklin, representing Watermen Pinnacle, Inc., stated that Resolution No. 2009-9 was helpful in the site being selected as one of the four finalists for consideration as the location of the new Boston Red Sox Spring Training Facility. Attorney Schropp stated that during the selection process and presentations it was apparent that Lee County had concerns that would be remedied if Airside Plaza was de-annexed from the City. Attorney Schropp stated that the new resolution should provide that if the site was selected as the site of the new stadium, the City would proceed with de-annexation procedures. Mayor Humphrey stated that a concern of Lee County was if the property remained within the City limits the property would be taxable because it was operated by a for-profit entity. Mayor Humphrey stated that the Constitution provided that property in Lee County would not be taxable. Attorney Schropp stated that other

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inter-jurisdictional issues were discussed during the selection process. Attorney Schropp stated that the Annexation Agreement previously entered into contemplated de-annexation. Attorney Schropp stated that de-annexation would only be utilized in the event the Airside Plaza was selected as the site for the Boston Red Sox Spring Training Facility. Mayor Humphrey stated that City Council should approve a resolution to express to the Lee County Board of County Commissioner that Airside Plaza would be de-annexed if selected. It was moved by Councilman Henderson, seconded by Councilman Leonardo and unanimously carried that a resolution be prepared to express to the Lee County Commission what the City would do if Airside Plaza was selected as the site of the Boston Red Sox Spring Training Facility.

NO. 28 RESOLUTION NO. 2009-13 EAST FORT MYERS WATER RECLAMATION CAMPUS WASTEWATER FACILITIES PLAN William P. Mitchell, City Manager, introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2009-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, APPROVING THE CITY OF FORT MYERS EAST FORT MYERS WATER RECLAMATION CAMPUS WASTEWATER FACILITIES PLAN DATED JANUARY 20, 2009; AUTHORIZING SUBMISSION OF THE PLAN TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; DESIGNATING AUTHORIZED REPRESENTATIVES; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Mitchell stated that after the East Fort Myers Water Reclamation Campus Wastewater Facilities Plan dated January 20, 2009, was adopted, the City could apply for a state loan. It was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to adopt the resolution at 7:05 o'clock p.m.

NO. 28A RESOLUTION NO. 2009-14 AGREEING TO PARTICIPATE IN THE INTERLOCAL SERVICE BOUNDARY AGREEMENT ACT WHICH PROVIDED FOR GOOD FAITH NEGOTIATIONS FOR ANNEXATION OF URBAN RESERVE AREAS BETWEEN COUNTIES AND MUNICIPALITIES William P. Mitchell, City Manager, introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2009-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, PURSUANT TO CHAPTER 171, PART II, FLORIDA STATUTES, THE INTERLOCAL SERVICE BOUNDARY AGREEMENT ACT, AGREEING TO PARTICIPATE IN THE PROCESS PROVIDED FOR THEREUNDER FOR THE PURPOSE OF ADDRESSING THE ISSUES MORE PARTICULARLY SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Mr. Mitchell stated that municipalities had been requested by Lee County to adopt resolutions agreeing to negotiate new urban reserve boundaries and municipal service area boundaries. Mr. Mitchell stated that a workshop was held on March 2, 2009, and the boundaries were modified to reflect the requested changes. It was moved by Councilman Henderson and seconded by Councilman Flanders to adopt the resolution. Councilman Leonardo stated that the exhibit to the resolution reflected additional territory requested at the workshop on

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March 2, 2009. Robert Gardner, Director, Community Development Department, stated that the northern edge of the City corresponded with submerged lands. Mr. Gardner stated that the joint planning area was delineated for planning studies, utilities, water quality, and environmental. Mr. Gardner stated that the joint planning area could be considered for annexation. Mr. Gardner stated that areas to the south and east of City boundaries were added to the urban reserve. Mr. Gardner stated that the center of population shifted to the south and east in the City. Mr. Gardner stated that the urban network preserved the way of life and right to function as a City. Mr. Gardner stated that years ago counties would exclusively control rural areas and cities would keep the urban areas. Mr. Gardner stated that the first round of discussions should include additional geographical areas or areas of concern when negotiating with Lee County. Mr. Gardner stated that there were no guarantees that the areas shown on map attached to the resolution would be annexed but it offered a position for negotiation. Councilman Wright stated that it was difficult to obtain help from Lee County regarding joint crime issues for east Fort Myers. Mayor Humphrey stated that it was appropriate for a unified government along Palm Beach Boulevard east of Interstate 75. Mr. Gardner stated that the land mass of the City was approximately 48.8 square miles and the urban reserve would add an additional 35.28 square miles for a total of 84 square miles. Mr. Gardner stated that Cape Coral had 115 square miles. Mr. Gardner stated that the population would increase from 68,698 to 165,717 making Fort Myers the ninth largest city in Florida. Mayor Humphrey stated that unless incorporated in the plan by other cities, the area of North Key Drive to Hancock Bridge Parkway was an urbanized high density area and would be appropriate to include for the City. Grant W. Alley, City Attorney, stated that the Cape Coral and Bonita Springs maps were relatively unique. Attorney Alley stated that the goals may not be to annex but a service boundary agreement that could have a term of 20 years preserved the rights of the areas in and adjacent to the City for distribution of services. Attorney Alley stated that there was a process for voluntary and involuntary annexation that was statutorily prescribed. Attorney Alley stated that Florida Statutes provide that a City can take advantage of the municipal services boundary act and enter into a negotiation process. Attorney Alley stated that Lee County had threatened the City with a referendum to the Lee County Charter which provided that in addition to following Florida Statutes on the annexation process, Lee County would have veto power if voters approved the amendment to the Lee County Charter. Attorney Alley stated that Lee County through Florida Statutes, Chapter 171 was utilizing a statutory procedure to develop alternative criteria for annexation in addition to what was provided in the statutes. Attorney Alley stated that the goal was for an interlocal agreement to be entered into for 20 years. Attorney Alley stated that the City would provide the municipal services to any area annexed on the urban reserve map after the Comprehensive Plan was amended to reflect the annexation. Attorney Alley stated that the Lee County Development Code would apply until the City amended the Comprehensive Plan. Attorney Alley stated that the City resolution provided that no party could declare an impasse for a period of 3 years. Attorney Alley stated that Florida Statutes provided that once negotiations begin and Lee County sent an invitation to negotiate there was 60 days to respond by resolution. Attorney Alley stated that the City would meet the 60 day requirement if the resolution was approved. Attorney Alley stated that Florida Statutes provided that the City had to negotiate in good faith for a period of 6 months. Attorney Alley stated that the responding resolution prevented Lee County from declaring an impasse for a period of 3 years. Attorney Alley stated that the City agreed to a one year no annexation resolution. Attorney Alley stated that Lee County did not want the City to do any more annexations until there was an interlocal agreement. Attorney Alley stated that the Cape Coral resolution provided for 3 years of no impasse or annexation. Attorney Alley stated that at the end of one year City Council would

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consider extending the one year or follow the statutory procedures for annexations. Mayor Humphrey stated that the City was surrounded by urban areas and annexation should not be restricted. Attorney Alley stated that if an impasse was declared and an interlocal unable to be agreed upon there was a process for dispute resolution. Attorney Alley stated that joint public meetings would have to be held with both governing bodies and a mediator. Attorney Alley stated that the resolution had legal significance and the City was engaging in a negotiation process. Attorney Alley stated that Florida Statutes encouraged the involvement of elected officials in the process. Attorney Alley stated that there were enclaves in the City that were being researched to determine if they could be annexed with an interlocal agreement. Attorney Alley stated that Florida Statutes provided if the property was small enough it could be annexed through an interlocal agreement between the county and the municipality. Attorney Alley stated that there was a referendum requirement for the governing body of the municipality and the voters within the areas to be annexed. Mr. Gardner stated that the urban reserve map was structured to determine the urban reserve areas around the City. It was moved by Councilman Henderson, seconded by Councilman Flanders and unanimously carried to adopt the resolution at 7:23 o'clock p.m.

NO. 29 MUNICIPAL INITIATIVE PETITION VERIFICATION OF THE NUMBER OF PETITIONS AS SUBMITTED BY CITIZENS FOR A BETTER FORT MYERS GOVERNMENT POLITICAL ACTION COMMITTEE FOR A CHARTER AMENDMENT TO CREATE AN ELECTED CITIZEN OVERSIGHT PANEL William P. Mitchell, City Manager, stated that the Municipal Initiative Petition Verification of the number of petitions as submitted by Citizens For A Better Fort Myers Government Political Action Committee was for a Charter amendment to create an elected Citizen Oversight Panel. Mr. Mitchell stated that the Lee County Elections Office and City Clerk had certified that there were 2,508 valid signatures which were sufficient to achieve the objective. It was moved by Councilman Henderson and seconded by Councilman Streets to accept the Municipal Initiative Petition Verification. Councilman Flanders stated that City Council considered a police review board by the appointment process long before the petition drive began. Councilman Flanders stated that City Council had not allocated funds to stop the elected citizen oversight panel. Councilman Wright stated that after he was elected he broached the subject of a citizen review board, there was a lot of comment from the community, and there was resistance from the City on the issue. Councilman Wright stated that meetings were held with Hilton Daniels, Chief, Police Department, who has since retired and a decision was made to have an independent review done by the Institute of Law and Justice. Councilman Wright stated that the Institute of Law and Justice found there was a problem that needed to be addressed. Councilman Wright stated that because the City did not respond quickly other members of the community felt compelled to take over the issue. Councilman Wright stated that an elected police oversight panel would be more expensive than a citizen review board. Councilman Wright stated that City Council should continue to work on the issue even if the citizens initiative petition passed or failed. Mr. Mitchell stated that a report from the Citizens Police Oversight Study Committee to create a Citizens Review Board was presented to City Council. Mr. Mitchell stated that an ordinance was being developed to create the Citizens Police Review Board and establish procedures. Councilman Leonardo stated that the City should place the issue succinctly to the voters to ensure they would know the legal issues and the cost to the City. Councilman Leonardo stated that an elected citizen oversight panel was another layer of government which may or may not be good. Councilman Leonardo stated that the City needed an informed citizenry voting and the City should provide the public with the information needed to make an informed vote. Mayor Humphrey stated that a review should be done to respond to the questions and enlighten

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the public. Mayor Humphrey stated that there should be a comparison between a review board and an elected oversight panel. Mayor Humphrey stated that each Council Member should be involved to ensure the public was well informed. Grant W. Alley, City Attorney, stated that over one year ago City Council adopted Resolution No. 2008-8 favoring a review board for civilian oversight of the Police Department. Attorney Alley stated that each Council Member appointed a member to the Citizens Police Oversight Study Committee. Attorney Alley stated that after the appointments were made to the Citizens Police Oversight Study Committee a series of meetings were held bi-weekly to study different models and types of civilian oversight review boards and a recommendation was made to City Council. Attorney Alley stated that the Resolution No. 2008-8 adopted by City Council provided that civilian oversight of the Police Department was wanted. Attorney Alley stated that the Citizens Police Oversight Study Committee held a series of public meetings, there was some public input, and they studied models from around the State. Attorney Alley stated that a report was presented to the City Manager for review which will be presented to City Council. Attorney Alley stated that the citizens initiative petition for Charter amendment to create an elected citizen oversight panel would amend the City Charter by referendum and if legally valid, the question would be placed on the ballot. Attorney Alley stated that if the Charter amendment was approved by the voters, the amendment would go into effect. Attorney Alley stated that the City could still have a Citizens Police Review Board. Attorney Alley stated that the Charter Amendment did not prohibit City Council or the City Manager from overseeing the Police Department. Attorney Alley stated that a major difference was that citizens would be elected to the citizen oversight panel. Attorney Alley stated that members of the Citizen Police Review Board would be appointed by members of City Council. Attorney Alley stated that neither board prohibited the other board. Attorney Alley stated that Florida Statutes controlled the number of words that could be used for the ballot language. Attorney Alley stated that City Council would adopt the ballot language and Charter Amendment would be placed on the ballot and. Attorney Alley stated that there would need to be filler in the ordinance because the petition was not in ordinance form. Attorney Alley stated that there would be accusations but the fact remained once there was a valid petition it was ministerial and it would be placed on the ballot for voters to decide. Attorney Alley stated that the ballot language had to be in a format that the voters could make a decision which was statutorily prescribed. Mayor Humphrey stated that the matter would be presented to City Council for approval and wording. It was moved by Councilman Henderson, seconded by Councilman Streets and unanimously carried to accept the Municipal Initiative Petition Verification of the number of petition as submitted by Citizens For A Better Fort Myers Government for a Charter amendment to create a citizen oversight panel.

NO. 30 STIPULATED SETTLEMENT AGREEMENT FOR CASE NO. 08-CA-7558 VIRGINIA SPLITT V. CITY OF FORT MYERS AND THROGMARTIN RIVERFRONT CORPORATION, REGARDING THE VUE, 2000 AND 2006 WEST FIRST STREET AND 1300 CARSON STREET Grant W. Alley, City Attorney, stated that the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, was for The Vue, 2000 and 2006 West First Street and 1300 Carson Street. Attorney Alley stated that a lawsuit was filed in March 2008 against the City and Throgmartin River Corporation in the Twentieth Judicial Circuit challenging the approval granted by the City for the development of the project. Attorney Alley stated that he along with Andrew Dickman, Esquire, attorney for Virginia Splitt, Plaintiff, Ron Throgmartin and Kerry Steeno, Vice President, Throgmartin Riverfront Corporation, and Nancy Stroud, outside counsel for the City recommended the settlement from a legal perspective and the City Manager recommended the settlement from a policy perspective. It was moved by Councilman Flanders and

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seconded by Councilman Henderson to approve the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street. Mayor Humphrey stated that the City Council made a finding that the exchange of property in Centennial Park for property owned by The Vue was in the best interest of the public and the City. Mayor Humphrey stated that there were benefits associated with the planned unit development ordinance for The Vue and the public walkway, and the City prevailed in the litigation. Mayor Humphrey stated that the City attempted to improve the position of the City consistent with the Downtown Master Plan by Duany, Plater-Zyberk and Company. Mayor Humphrey stated that The Vue property was under foreclosure and the purchaser of property would be subject to the conditions of The Vue Planned Unit Development and the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street. Mayor Humphrey stated that the City received land that benefitted Centennial Park. Mayor Humphrey stated that the City received a 10 foot walkway around the property for the public. Attorney Alley stated that the building size would be reduced, there was a re-swap of the land, the City would withdraw the conversion application with the National Park Service, and there would be an amended Development Agreement that reflected the reduced height of the building. Attorney Alley stated that the amended development agreement reflecting the terms would be submitted through the City process and reviewed by City Council. Attorney Alley stated that the Stipulated Settlement Agreement provided the building size was reduced, the density lower, a re-swap of the land, the City would take back the portion of Centennial Park, the City would withdraw the conversion application, and make a small scale map amendment. Attorney Alley stated that the amended Development Agreement would be submitted to the Planning Board for review and to City Council for adoption. Attorney Alley stated that there would be an opportunity to comment on the substantive merits of the amended Development Agreement. Nancy Stroud, outside counsel representing the City, stated that the Stipulated Settlement Agreement maintained the original plan. Attorney Stroud stated that if the development proceeded with residential in the second phase the various improvements such as the riverwalk were part of The Vue Planned Unit Development requirements. Attorney Stroud stated that the plaza feature and everything in the first alternative planned unit development would be completed. Attorney Stroud stated that the public benefits would remain plus transportation improvements. Attorney Stroud stated that there was a concern that the market would sustain a residential development. Attorney Stroud stated that approval of the Stipulated Settlement Agreement of Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street was approving the terms of the Development Agreement, so the Development Agreement would be presented to City Council. Attorney Stroud stated that a significant change to the Development Agreement would be inconsistent to the Stipulated Settlement Agreement. Attorney Stroud stated that the Development Agreement attached to the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street maintained the improvements and public benefits that were part of the approved alternative. Ron Throgmartin, Throgmartin Riverfront Corporation, stated that the Stipulated Settlement Agreement was supported. Mr. Throgmartin stated that The Vue property would never be foreclosed. Mr. Throgmartin stated that the problems started with the inability of the City to obtain approval from the National Park Service. Mr. Throgmartin stated that the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and

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Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street would provide the tower would be reduced to eighteen stories with 189 units, and when it was decided what would be constructed, the plans would be presented to City Council. Attorney Dickman stated that Virginia Splitt had authorized him to agree to the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street. Attorney Stroud stated that Stipulated Settlement Agreement allowed construction of the office building. Attorney Stroud stated that if the developer proceeded before all of the steps were completed; there was some risk on the part of the developer. Attorney Stroud stated that the expectation was for the re-swap of the land and there should not be issues for the small scale amendment to the Comprehensive Plan. Attorney Stroud stated that everything should be completed within one year. Attorney Stroud stated that until the terms were completed the judge would hold the suit in abatement. Attorney Stroud stated that the Throgmartin Riverfront Corporation could construct the commercial office building with the known risks. It was moved by Councilman Flanders, seconded by Councilman Henderson and unanimously carried to approve the Stipulated Settlement Agreement for Case No. 08-CA-7558 Virginia Splitt v. City of Fort Myers and Throgmartin Riverfront Corporation, regarding The Vue, 2000 and 2006 West First Street and 1300 Carson Street.

There being no further business to come before the meeting, it was moved by Councilman Henderson, seconded by Councilman Flanders and unanimously carried to adjourn at 8:00 o'clock p.m.

ATTEST:

Marie Adams, CMC
City Clerk