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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 2, 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 Mayor Humphrey.

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

**PUBLIC INPUT – NON-PUBLIC HEARING AGENDA ITEMS:** There was no one present to be heard.

**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. 12 ranking of firms for Request for Qualifications No. 11/18/08-RFQ-PW, Construction Engineering and Inspection Services for Brookhill Subdivision Utility and roadway improvements, and authorize negotiations with the number one ranked firm should be removed from the consent agenda for discussion. Councilman Wright stated that Item No. 12a Professional Services Agreement with Architects Design Group, Inc., for STARS Program and Complex Master Plan, Request for Qualifications No. 07/08/08-RFQ-PW should be removed from the consent agenda for discussion.

**NO. 1 MINUTES** Minutes of the regular meeting held on February 17, 2009, were delivered to City Council.

**NO. 2 APPOINTMENT TO THE BROWNFIELDS ADVISORY BOARD** Councilman Simms nominated Eric Michael Carrico for appointment to the Brownfields Advisory Board, term effective March 2, 2009, through March 1, 2010.

**NO. 3 GRANT APPLICATION TO LEE COUNTY NATURAL RESOURCES DIVISION/WEST COAST INLAND NAVIGATION DISTRICT FOR THE WATERWAY DEVELOPMENT PROGRAM FOR THE POLICE DEPARTMENT MARINE UNIT** The grant application, in the amount of \$107,831.00, to Lee County Natural Resources Division/West Coast Inland Navigation District for the Waterway Development Program would assist the Police Department in continuing to implement a full time marine unit. An in-kind match, in the amount of \$63,979.00, representing 75 percent of the salary and benefits for a police officer was required for a total project in the amount of \$171,810.00. The police officer would be full-time in the marine unit assisted by part-time marine unit patrol officers during periods of high activity on the water, holidays, and special events. Overtime funds from the grant would be used to pay the officers during the operations.

**NO. 4 GRANT APPLICATION TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR COMMUNITY ACTION FOR A RENEWED ENVIRONMENT PROGRAM** The grant application, in the amount of \$100,000.00, to United States Environmental Protection Agency for the Community Action for a Renewed Environment Program was an innovative way for a community to organize and take action to identify and reduce toxic pollution in the environment. Matching funds or in-kind services were not required by the City. The grant funds would be used as follows:

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1. Analyze water pollution and sources.
2. Use mailing and public media as educational information to address storm water and runoff pollution.
3. Develop Low Impact Development standards promoting sustainability and stormwater recycling.

The grant funding would assist the City in addressing water quality and environmental problems due to illegal dumping, overuse of fertilizers, development, lack of public knowledge about storm water and pollutants, and invasive exotic plants.

**NO. 5 TECHNICAL SERVICE SUPPORT AGREEMENT WITH PHYSIO-CONTROL, INC. FOR SERVICE SUPPORT FOR THE FIRE DEPARTMENT LIFEPAK DEFIBRILLATORS, MONITORS, AND BATTERIES** The Technical Service Support Agreement, in the amount of \$6,034.00, with Physio-Control, Inc. was for service support for the Fire Department LIFEPAK defibrillators, monitors, and batteries, effective April 29, 2009, through April 28, 2010. The service agreement provided the required annual calibration, maintenance, and on-site repair, inspection and battery replacement for 6 LIFEPAK 12 defibrillators/monitors.

**NO. 6 AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR BILLY'S CREEK FILTER MARSH PHASE II & III ENVIRONMENTAL RESTORATION PROJECT, REQUEST FOR QUALIFICATIONS NO. 10/06/08-RFQ-PW WITH WRIGHT CONSTRUCTION GROUP, INC.** The Agreement for Construction Management Services for Billy's Creek Filter Marsh Phase II & III Environmental Restoration Project, Request for Qualifications No. 10/06/08-RFQ-PW, in the amount of \$57,126.25, with Wright Construction Group, Inc. was for preconstruction services including constructability, design review, development of specifications, and bid package.

**NO. 7 PROJECT CLOSE OUT FOR SUPPLEMENTAL TASK AUTHORIZATION NO. 10 TO PROFESSIONAL SERVICES AGREEMENT CONSTRUCTION MANAGEMENT-AT-RISK – CONTINUING CONTRACT, REQUEST FOR QUALIFICATIONS NO. 1001-04, WITH TAYLOR-PANSING, INC. FOR RENOVATION OF THE PUBLIC WORKS CENTER PHASE II** The Project Close Out for Supplemental Task Authorization No. 10 to Professional Services Agreement Construction Management-At-Risk – Continuing Contract, Request for Qualifications No. 1001-04, with Taylor-Pansing, Inc. was for Renovation of the Public Works Center Phase II, 4200 Dr. Martin Luther King Jr. Boulevard. The project was closed out and retainage released in the amount of \$53,276.20. The contractor submitted final close out documentation including lien release and a one year warranty.

**NO. 8 AUTHORIZATION NO. 22 TO PROFESSIONAL SERVICES AGREEMENT CONTINUING CONTRACT FOR UTILITY RATE AND FINANCIAL ANALYSES SERVICES, REQUEST FOR QUALIFICATION NO. 502-04, WITH BURTON & ASSOCIATES FOR FISCAL YEAR 2009 WATER AND SEWER REVENUE SUFFICIENCY ANALYSIS** Authorization No. 22, in the amount of \$13,380.00, to Professional Services Agreement Continuing Contract for Utility Rate and Financial Analyses Services, Request for Qualification No. 502-04, with Burton & Associates was for Fiscal Year 2009 Water and Sewer Revenue Sufficiency Analysis. The Fiscal Year 2009 Water and Sewer Revenue Sufficiency Analysis would result in a 10 year financial management program for water and wastewater utility and identify the annual capital projects expenditures that could be funded within an acceptable program in the current rate structure.

**NO. 9 SUPPLEMENTAL TASK AUTHORIZATION NO. A1 TO PROFESSIONAL SERVICES AGREEMENT – CONTINUING CONTRACT FOR MISCELLANEOUS ENGINEERING SERVICES, REQUEST FOR QUALIFICATIONS NO. 05-10-05, WITH BOYLE ENGINEERING CORPORATION FOR 10 MILE CANAL DRAINAGE IMPROVEMENTS**

Supplemental Task Authorization No. A1, in the not-to-exceed amount of \$76,917.00, to Professional Services Agreement – Continuing Contract for Miscellaneous Engineering Services, Request for Qualifications No. 05-10-05, with Boyle Engineering Corporation was for 10 Mile Canal Drainage Improvements. The 10 Mile Canal Drainage Improvements included removal of fine suspended solids, increasing the dissolved oxygen within the canal, and addressing major contaminant within the watershed. Boyle Engineering would provide design engineering services, including but not limited to, design, permitting, construction observation, and certification of treatment facility. A grant, in the amount of \$300,000.00, was received from the Florida Environmental Protection for the design, construction, and certification of the proposed improvements.

**NO. 10 GRANT OF PUBLIC UTILITY EASEMENT FROM CENTEX HOMES FOR AN EASEMENT LOCATED AT 10990 PLANTATION GARDEN DRIVE, SOMERSET AT THE PLANTATION PARCEL TWO**

The Grant of Public Utility Easement from Centex Homes for a 2 foot by 10 foot, more or less, perpetual and non-exclusive easement located at 10990 Plantation Garden Drive, Somerset at the Plantation Parcel Two, was for installation and maintenance of utilities at the development maintenance facility. The easement was described as follows:

A tract or parcel of land lying in Tract “G-6”, Somerset at the Plantation Parcel Two, Instrument No. 2006000277981, Lee County Records, a subdivision lying in Sections 13, 14 & 23, Township 45 South, Range 25 East, City of Fort Myers, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

Commencing at the northeast corner of said Tract “G-6” run S00°00’00”E along the east line of said platted tract for 10.00 feet to an intersection with the south line of a 10 feet wide public and technology utility easement as shown on said plat; thence run S88°20’32”W along said south line for 33.09 feet to the point of beginning;

From said point of beginning run S01°39’28”E for 2.00 feet; thence run S88°20’32”W parallel and 2.00 feet south of said south easement line for 10.00 feet; thence run N01°39’28”W for 2.00 feet to an intersection with said south easement line; thence run N88°20’32”E along said south line for 10.00 feet to the point of beginning.

Containing 20 square feet, more or less.

Bearings hereinabove mentioned are based on east line of said Tract “G-6” to bear S00°00’00”E.

**NO. 11 AWARD BID NO. 76-08-09 EASTWOOD GOLF COURSE IRRIGATION REUSE LAKE TO EHC INC.**

Pursuant to advertisement in the Fort Myers News Press, issues of January 13, 2009, and January 20, 2009, Affidavit of Publication on file, bids were received on February 12, 2009, in the Purchasing and Contracts Administration Division, Financial Services Department, for Bid No. 76-08-09, Eastwood Golf Course Irrigation Reuse Lake. Bid tabulation and recommendation were as follows:

Eastwood Golf Course Irrigation Reuse Lake

Bid Opening Date: February 12, 2009

Bid #76-08-09

<b>Company Name</b>	<b>Address</b>	<b>Attended Pre-Bid</b>	<b>Bid Bond (Part F)</b>	<b>Minority Business Enterprise PKG (Part G)</b>	<b>No Lobbying Affidavit (Part K)</b>	<b>E-Verify Affidavit (Part L)</b>	<b>List of Subs</b>	<b>Addenda Receipt Sheet</b>	<b>Total Cost (Part C-4, from Addendum #4, Includes 5% Contingency)</b>
<b>EHC, Inc.</b>	<b>1360 Railhead Blvd., Naples, FL 34110</b>	<b>Yes</b>	<b>Yes</b>	<b>6%</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>\$817,919.56</b>
Gulf Coast Site, Inc. Local City of Fort Myers	3093 Hunter St., FM, FL 33916	Yes	Yes	100%	Yes	Yes	No	Yes	\$986,851.23
Mitchell & Stark Local City of Fort Myers	6001 Shirley St., Naples, FL	Yes	Yes	6%	Yes	Yes	No	Yes	\$1,074,137.40
Ray Smith Excavating	7173 SW Cr 769, Arcadia, FL 34229	Yes	Yes	10%	Yes	Yes	No	Yes	\$943,685.93
Wright Construction Group Local Lee County	5811 Yougquist Rd Fort Myers, FL 33912	Yes	Yes	16.50%	Yes	Yes	Yes	Yes	\$1,142,618.37

Notes: Gulf Paving was non-compliant in respect to the Minority Business Enterprise utilization requirement.  
Phillips & Jordan, Inc. - "No bid."  
**Bold text indicates apparent low-bidder**

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The Public Works Department recommended that the bid for Eastwood Golf Course Irrigation Reuse Lake, in the amount of \$685,870.00, be awarded to EHC Inc.

**MOTION FOR CONSENT AGENDA** It was moved by Councilman Streets, seconded by Councilman Flanders and unanimously carried to approve the Consent Agenda with the exception of Items No. 12 and 12a. 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 FLANDERS: NO. 12 RANKING OF FIRMS FOR REQUEST FOR QUALIFICATIONS NO. 11/18/08-RFQ-PW CONSTRUCTION ENGINEERING AND INSPECTION SERVICES FOR BROOKHILL SUBDIVISION UTILITY AND ROADWAY IMPROVEMENTS AND AUTHORIZE NEGOTIATIONS WITH THE NUMBER ONE RANKED FIRM** Pursuant to advertisement in the News Press, issues of November 24, 2008 and December 1, 2008, Affidavit of Publication on file, Requests for Qualification for Construction Engineering and Inspection Services for Brookhill Subdivision Utility and Roadway Improvements – RFQ No. 11/18/08-RFQ-PW were received in the Purchasing and Contracts Administration Division, Financial Services Department, by December 23, 2008, from firms listed alphabetically as follows:

Banks Engineering  
Barraco and Associates, Inc.  
Community Engineering Services, Inc.  
Consul-Tech Construction Management, Inc.  
Heidt & Associates, Inc.  
KCCS, Inc.  
HSA Engineers & Scientists  
PBS&J

Councilman Flanders stated that the Selection Committee received oral presentations from three firms on February 9, 2009, and ranked the firms as follows:

1. Consul-Tech Construction Management, Inc.
2. Barraco and Associates, Inc.
3. KCCS, Inc.

Councilman Flanders stated that there was a first selection to determine how many engineering firms submitting qualifications would be selected for oral presentations. Councilman Flanders stated that there were five voting members who were employees on the Competitive Negotiations Committee that included Saeed Kazemi, Interim Director, Public Works Department. Councilman Flanders stated that Mr. Kazemi did not attend the meeting for the oral presentations. Mr. Kazemi stated that the presentations took place on the day President Barack Obama visited Fort Myers and due to preparations for the visit and he was unable to attend the oral presentations. Mr. Kazemi stated that he was typically a member of the selection team for ranking. Ted Coyman, Contracts Manager, Purchasing and Contracts Administration Division, Financial Services Department, stated that the second phase of the selection which was the oral presentations when the firms presented information originally submitted and answered clarifying questions. Mr. Coyman stated that during the process the Selection Committee ranked the firms in order of preference. Mr. Coyman stated that the Selection Committee referred to the original notes from the first round of discussions and reviews of the submittals and took additional notes during the oral presentations. Mr. Coyman stated that after the ranking the information was sent in the form of a notice letter which included the ranking sheet

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to the submitting firms. Mr. Coyman stated that the video for the Selection Committee meetings were on the City website which was referenced in the ranking notification letter. Councilman Flanders stated that the submitting firms should be provided the evaluation criteria utilized for the final ranking. Councilman Flanders stated that there were 5 firms that submitted applications and 1 firm was ranked number 1. Councilman Flanders stated that the number 1, 2 and 3 ranked firms were requested to make oral presentations. Councilman Flanders stated that the number 1 firm from the first ranking was rated number 3 in the last ranking. Councilman Flanders stated that the firm should be advised why they went from number 1 to number 3. Mr. Coyman stated that the criteria did not change and the firms were provided with the criteria which was included in the original solicitation document. Mr. Coyman stated that during presentations there was an opportunity for the Selection Committee to quiz the firm on their understanding of what was being requested and delve into their approach on the project. Mr. Coyman stated that some firms looked good on paper but during presentations some did not have a good grasp of what the City was requesting which influenced the final ranking. Mr. Coyman stated that the firms knew that the ranking at oral presentation was based on the presentation. Councilman Flanders stated that the City should be clear in the notice of how the final three firms were ranked. Mr. Coyman stated that the result of the first process was not a ranking but a selection for short listing firms for oral presentations where clarifying questions are answered. Mr. Coyman stated that the final ranking took place after clarifying questions were asked during presentation. Councilman Flanders stated that the applicants should be made aware that the initial selection was a method to narrow the list for the final presentations. Councilman Flanders stated that the City needed to make clear the evaluation process to allow companies to make changes to improve the chances of being the selected company. Councilman Flanders stated that the 3 firms selected for oral presentations were given the highest score of 10 for location of people doing the work and location of office doing the work. Councilman Flanders stated that the 3 firms were from different cities. Mr. Coyman stated that there was a graduated scale based on distance from City Hall and the closer companies were to City Hall, the higher the point score. Mr. Coyman stated that there was a score for the office doing the work and one score for the personnel doing the work. Councilman Flanders stated that the short-listed firms listed addresses as Fort Myers, North Fort Myers, and Tampa and all received 10 points for location. Councilman Flanders stated that firms within City limits should receive the most points, firms within Lee County the second lowest points, and firms outside Lee County the third lowest points. Mr. Coyman stated that the score was based on distance. Mr. Coyman stated that Consul-Tech Construction Management, Inc. received a score of 9 versus 10. Councilman Flanders stated that one member of the Selection Committee rated Consul-Tech Construction Management, Inc. a score of 9 and the other four members gave them a score of 10. Councilman Flanders stated that the Tampa firm received the same score as the firm located in Fort Myers near City Hall. Mr. Coyman stated that the score sheets indicated that Consul-Tech Construction Management, Inc. scored a point lower for the office doing the work. Councilman Flanders stated that Barraco and Associates, Inc., a Fort Myers firm, received a score of 10, Consul-Tech Construction Management, Inc., a North Fort Myers firm, received a score of 9, and KCCS, Inc., a Tampa firm, received a score of 10. Mr. Coyman stated that KCCS, Inc. had an office and personnel close to City Hall. Mr. Coyman stated that the base of operation could be located further away than the office that would actually do the work. Councilman Flanders stated that there was no office indicated other than Tampa for KCCS, Inc. Laurie Victory, Manager, Purchasing & Contracts Administration Division, Financial Services Department; stated that KCCS, Inc. being incorporated in Tampa did not mean they did not have an office in Fort Myers. Ms.

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Victory stated that when the proposals were submitted, the firms advised where the work would be done and who would perform the work which was how the Selection Committee graded the firms in the scoring system. Ms. Victory stated that Fort Myers and Lee County was not separated for receiving a score of ten. Ms. Victory stated that the sliding scale on the location of the office that would perform the work was provided with the solicitation packet for request for qualifications. Ms. Victory stated that an hour away was 9 points, 2 hours was 8 points and the point system decreased depending on the distance from Lee County. Mr. Coyman stated that the scoring of 10 points by all members of the Selection Committee indicated that the Request for Qualifications proposal made it clear about the office and personnel location that would be performing the work. Councilman Flanders stated that there was no indication KCCS, Inc. had a location in Fort Myers. Mr. Coyman stated that firms that had local presence and local employees with expertise that could perform the work received the highest scoring. Mr. Coyman stated that the City had no control over firms who downsized or filed for bankruptcy after the award the project. Mr. Coyman stated that the City would address the situation from the standpoint of being able to perform and meet the terms of the contract. It was moved by Councilman Flanders, seconded by Councilman Henderson and unanimously carried to approve the ranking for Request for Qualifications No. 11/18/08-RFQ-PW, Construction Engineering and Inspection Services for Brookhill Subdivision Utility and Roadway Improvements and authorize negotiations with the number one ranked firm, Consul-Tech Construction Management, Inc.

**ITEM REMOVED FROM CONSENT AGENDA BY COUNCILMAN WRIGHT: NO. 12A PROFESSIONAL SERVICES AGREEMENT WITH ARCHITECTS DESIGN GROUP, INC. FOR STARS PROGRAM AND COMPLEX MASTER PLAN, REQUEST FOR QUALIFICATIONS NO. 07/08/08-RFQ-PW** Councilman Wright stated that the Professional Services Agreement, in the amount of \$43,000.00, with Architects Design Group, Inc. for STARS Program and Complex Master Plan, Request for Qualifications No. 07/08/08-RFQ-PW, was effective for 1 year with an option to renew for two additional 1 year periods. Councilman Wright stated that it was not an issue to give the STARS Program an extra \$45,000.00 but there was a concern about the way the funds would be spent. Councilman Wright stated that the STARS Complex, 2980 Edison Avenue, improved the quality of life and ensured the safety for residents of central and east Fort Myers but now was not the time to spend funds on a master plan that would focus on a design space and a demographic study. Councilman Wright stated that extra money should be spent on programming or overtime staff that would keep the complex open longer to work with the children. Councilman Wright stated that the STARS Complex needed additional computers servicing the children in need and a demographic study was not needed. Councilman Wright stated that it was nice to have a concept and idea in the future but the City should make sure there were additional employees available for children over the next 18 months. Councilman Wright stated that spending funds for a design and concept was not in the best interest of serving the children. William P. Mitchell, City Manager, stated that the expansion of the STARS Program had been a goal of the City for a long time. Mr. Mitchell stated that it was possible to obtain a design firm to develop a design based on the future needs of the community for a facility like the STARS Complex. Mr. Mitchell stated that the demographics and distribution of age groups utilizing the STARS Complex was needed. Mr. Mitchell stated that the firm would have to design the expansion of the facility. Mr. Mitchell stated that the funds were allocated for the STARS Program and Complex Master Plan in the General Fund budget for Fiscal Year 2008-2009. Mr. Mitchell stated that if the funds were not utilized for the STARS Program and Complex Master Plan it would be possible to utilize the funds for other needs. Councilman Simms stated that the STARS Complex was a physical building and the program lacked attention. Councilman Simms stated that the STARS Complex needed to

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be expanded and it was time to take action. Councilman Simms stated that the money should not be used for anything but the STARS Complex. Councilman Wright stated that the issues were programming and facility. Councilman Wright stated that if the facility was not being programmed adequately more attention and funding were needed for programming. Councilman Wright stated that it did not make sense to expand a building that was not being adequately utilized. Councilman Wright stated that the City had to be reactive to the economic conditions. Councilman Wright stated that the money should be utilized for programming which was inadequate. Councilman Simms stated that utilizing the STARS Complex as is would not be an adequate program. Councilman Simms stated that the STARS Program and Complex Master Plan would not resolve all the problems. Councilman Wright stated that the City had an obligation to reach out to children as quickly as possible. Councilman Wright stated that the City had failed with the programming at the STARS Complex. Councilman Wright stated that more people were needed working more hours at the STARS Complex. Councilman Streets stated that it was a disservice to the community and children to add additional programs when the space and equipment was inadequate. Councilman Streets stated that a STARS Program and Complex Master Plan was necessary to create something new in a better environment. Councilman Simms stated that the original STARS Program did not exist because it was consortium between the Lee County School Board and the Parks and Recreation Department. Councilman Simms stated that the Lee County School Board was not meeting the provisions that were originally set forth. Mayor Humphrey stated that the STARS Complex and Program Master Plan was a budgeted item because the site planning was needed. Austin Morris, Manager, Recreation Division, Public Works Department, stated that the STARS Program offered after school and summer camp programs which were always at maximum capacity. Mr. Morris stated the STARS Complex had personnel and space for 250 children to enroll and the capacity was reached at the beginning of each school year and there was a substantial waiting list. Mr. Morris stated that there was not enough space for additional computers and programs at the STARS Complex. Mr. Morris stated that the STARS Program and Complex Master Plan would be a design separating space for academic use and recreational use. Mr. Morris stated that there was not a demand for swimming on the weekends and priorities necessitated utilizing the resources for the academic, after school, or camp programs. Councilman Wright stated that east Fort Myers had no recreation facilities. Councilman Wright stated that the highest juvenile crime was in an area between 2 five lane arterial roads with no services in east Fort Myers. Councilman Wright stated that there needed to be a commitment by City Council to ensure children in east Fort Myers have a recreation facility. Councilman Wright stated that considering the economy City Council needed to be more reactive and the STARS Program and Complex Master Plan was not the right way to spend funds. Councilman Wright stated that east Fort Myers needed a facility to take care of youth and stop the cycle of violent crime. It was moved by Councilman Wright, seconded by Councilman Streets to approve the Professional Services Agreement, in the amount of \$43,000.00, with Architects Design Group, Inc. for the STARS Program and Complex Master Plan, Request for Qualifications No. 07/08/08-RFQ-PW, effective for 1 year with option to renew for two additional 1 year periods. Councilman Streets stated that Shady Oaks Community Center, 3280 Marion Street, was a facility in east Fort Myers that housed the Boys & Girls Club that could be enhanced. Councilman Streets stated that providing children with the amenities and education programs were needed and perhaps education programs can eliminate crime. Councilman Wright stated that Shady Oaks Community Center was approximately three and one-half miles from the edge of the City where the most violent crime was occurring. Councilman Wright stated that the facilities needed in east Fort Myers would assist in breaking the cycle of violence with 8 to 12 year olds. It was moved by Councilman Wright, seconded by Councilman Streets and

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unanimously carried to approve the Professional Services Agreement, in the amount of \$43,000.00, with Architects Design Group, Inc., for STARS Program and Complex Master Plan, Request for Qualifications No. 07/08/08-RFQ-PW, effective for 1 year with an option to renew for two additional 1 year periods.

**NO. 17A CITY COUNCIL NOMINATION FOR THE METROPOLITAN PLANNING ORGANIZATION BOARD TO REPLACE RANDALL P. HENDERSON, JR.** Councilman Leonardo stated that it was suggested at a priori Council meeting that he be the appointment to the Metropolitan Planning Organization in July 2009 replacing Councilman Henderson. Councilman Leonardo stated that he was elected by the Board of Commissioners to be chairman of the Community Redevelopment Agency. Councilman Leonardo stated that Councilman Simms should assume the seat of Councilman Henderson in July 2009. Councilman Henderson stated that Councilman Simms was the logical choice since he was an alternate on the Metropolitan Planning Organization. No action was taken.

**NO. 13 CONTINUED PUBLIC HEARING: THIRD READING – ORDINANCE NO. 3501 REZONING FROM URBAN CENTER TO PLANNED UNIT DEVELOPMENT AND THE DEVELOPMENT PLAN FOR PAVESE PARKING LOT, 1810 LEE STREET, BETWEEN LEE STREET AND JACKSON STREET NORTH OF DR. MARTIN LUTHER KING JR. BOULEVARD AS REQUESTED BY THE CITY OF FORT MYERS, LESSEE, ON BEHALF OF PAVESE, HAVERFIELD, DALTON, HARRISON, AND JENSON, LLP, OWNERS (QUASI-JUDICIAL)** Pursuant to advertisement in The News Press, issue of February 5, 2009, Affidavit of Publication on file, the public hearing continued from February 17, 2009, was held at this time on rezoning from Urban Center to Planned Unit Development and the Development Plan for Pavese Parking Lot, 1810 Lee Street, between Lee Street and Jackson Street north of Dr. Martin Luther King Jr. Boulevard as requested by the City of Fort Myers, Lessee, on behalf of Pavese, Haverfield, Dalton, Harrison, and Jenson, LLP, Owners. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the third reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3501

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, APPROVING REZONING FROM URBAN CENTER TO PLANNED UNIT DEVELOPMENT AND THE DEVELOPMENT PLAN FOR PAVESE PARKING LOT PLANNED UNIT DEVELOPMENT, LOCATED AT 1810 LEE STREET IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Humphrey stated that the property was described as follows:

A parcel in Block 13, Homestead of James Evans, Section 13, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida.

A tract or parcel of land lying in Section 13, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida, being a part of Block 13 as shown on the Plat of Homestead of James Evans as recorded in Plat Book 1 at

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Page 23, Public Records of Lee County, Florida which tract or parcel is described as follows;

From the northeast corner of said Block 13 run S 29° 25' 33" E along the east line of said Block 13, also being the west right-of-way line of Lee Street (50 feet wide) for 503.98 feet to the northeast corner of the lands described in deed recorded in Official Record Book 702 at Page 283 and the northeast corner of lands as described in deed recorded in Official Record Book 2362 at Page 1695 and the Point of Beginning. From said Point of Beginning continue S 29°25'33" E along the west right-of-way line of Lee Street and the east line of the lands described in Official Record Book 2369 at Page 1695 and the lands as described in Official Record Book 2363 at Page 1710, said Public Records for 99.93 feet to the southeast corner of the lands as described in said Official Record Book 2363 at Page 1710; thence run S 57°35'13" W along the south line of the lands described in said deed for 166.84 feet to the southwest corner of said lands, thence run N 29°25'35" W along the west line of the lands described in said deed for 1.03 feet to an intersection with the easterly prolongation of the south line of the lands as described in Official Record Book 2363 at Page 1712, said Public Records; thence run S 57°35'13" W along said prolongation and said south line for 172.06 feet to an intersection with the east right-of-way line of Jackson Street (50 feet wide) also being the west line of the lands as described in said deed; thence run N 23°22'52" W along said right-of-way line and deed line for 99.00 feet to the northwest corner of the lands as described in said deed; thence run N 57°35'13" E departing said right-of-way line and along the north line of the lands as described in said deed for 164.23 feet to the northeast corner of the lands as described in said deed also being the southwest corner of the lands described in Official Record Book 702 at Page 283 of said Public Records; thence run N 26°23'09" W along the west line of the lands as described in Official Records Book 702 at Page 283, said Public Records for 2.21 feet to the Northwest corner of said lands; thence run N 58°00'13" E along the north line of the lands as described in said deed for 164.06 feet to the Point of Beginning.

Parcel contains 33,058 square feet (0.76 acres) more or less.

Subject to easements, restrictions, and reservations of record.

Marie Adams, CMC, City Clerk, administered the oath to those persons who would give testimony during the quasi-judicial public hearing. Councilman Leonardo stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Councilman Henderson stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Councilman Flanders stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Councilman Simms stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Councilman Streets stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Councilman Wright stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm. Mayor Humphrey stated that he had no exparte communication regarding the Planned Unit Development for Pavese Law Firm.

Councilman Leonardo left the meeting at 5:26 o'clock p.m.

Steven C. Hartsell, Partner, Pavese Law Firm, stated that there was nothing additional to disclose regarding compensation offered to support or not object to the project to his knowledge. Mr. Hartsell stated that there was a scrivener's error in Section 5 of the ordinance and the last sentence should be as follows:

. . . Section 118.8.2.B prior to commencement . . .

Councilman Leonardo returned to the meeting at 5:28 o'clock p.m.

There being no one else present to be heard, it was moved by Councilman Flanders, seconded by Councilman Leonardo to adopt the ordinance with revision to Section 5, last sentence, to 118.8.2.B. 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. Ordinance was adopted at 5:28 o'clock p.m.

**NO. 14 PUBLIC HEARING: SECOND READING – ORDINANCE NO. 3502 AMENDING CITY CODE CHAPTER 70 SOLID WASTE AND CREATING MANDATORY RECYCLING REGULATIONS** Pursuant to advertisement in The News Press, issue of February 18, 2009, Affidavit of Publication on file, a public hearing was held at this time on amending the City Code, Chapter 70 Solid Waste and creating mandatory recycling. 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. 3502**

**AN ORDINANCE  
To Be Entitled:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 70, SOLID WASTE, AND CREATING ARTICLE IV. MANDATORY RECYCLING OF RESIDENTIAL, COMMERCIAL, NON-PROFIT ENTITY, SPECIAL EVENTS, MULTI-FAMILY SOLID WASTE, CONSTRUCTION AND DEMOLITION; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

Paul Flores, Utilities/Solid Waste Superintendent, Solid Waste Division, Public Works Department, stated that garbage collection and recycling would be consolidated for all residential accounts in the City on April 6, 2009. Mr. Flores stated that the proposed ordinance mandated that all City residents participate in recycling as of October 1, 2009. Mr. Flores stated that enforcement would be done through monitoring. Mr. Flores stated that there was mandatory recycling for residential but there was not much participation. Mr. Flores stated that the focus would be on the commercial accounts which participate in recycling at less than 20 percent. Mr. Flores stated commercial property was targeted and it was easier to enforce commercial account as opposed to residential. It was moved by Councilman Streets, seconded by Councilman Flanders to adopt the ordinance. Mr. Flores stated that two definitions should be added to Section 70-110 as follows:

*Delivery or self-hauling* means to a recycling facility or material recovery facility which includes intermediate delivery to and temporary storage at a transfer station.

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*Transfer station* means a facility where waste is unloaded from collection vehicles and temporarily stored before being reloaded into larger vehicles for shipment to landfills, material recovery centers, and recycling facilities.

Mr. Flores stated that the transfer station in the City was Waste Corporation of America which was permitted but not in use. Mr. Flores stated that Waste Management applied for a permit to construct a transfer station at the Gulf Coast Landfill. Mr. Flores stated that there was not a current site that might be in the application process for a transfer station. Councilman Leonardo stated that there was 1 transfer station not used, 1 transfer station that was used occasionally and 1 transfer station to be constructed. Mr. Flores stated that Florida Statutes prevented the City from dictating where commercial recycles go. Mr. Flores stated that a private hauler had the right to pick-up recyclables and takes them wherever they chose. Paul Fish, resident, Pelican Preserve, stated that the transfer station at the Gulf Coast Landfill was not permitted. Mr. Fish stated that if the transfer station was approved, the permit would be for Class 3 materials only, not garbage. There being no one else to be heard, it was moved by Councilman Streets, seconded by Councilman Flanders to adopt the ordinance with two definitions added to Section 70-110 as follows:

*Delivery or self-hauling* means to a recycling facility or material recovery facility which includes intermediate delivery to and temporary storage at a transfer station and

*Transfer station* means a facility where waste is unloaded from collection vehicles and temporarily stored before being reloaded into larger vehicles for shipment to landfills, material recovery centers, and recycling facilities.

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. Ordinance was adopted at 5:23 o'clock p.m.

**NO. 15 PUBLIC HEARING: SECOND READING - ORDINANCE NO. 3503 INCORPORATING CLARIFICATIONS TO THE DEVELOPMENT ORDER FOR SUN CITY FORT MYERS, ORDINANCE NO. 2984** Pursuant to advertisement in The News Press, issue of February 12, 2009, Affidavit of Publication on file, a public hearing was held at this time on incorporating clarifications to the Development Order for Sun City Fort Myers, Ordinance No. 2984, by changing the name to Pelican Preserve Development of Regional Impact, recognizing satisfied conditions and obligations, completion date for right turn lane, completion date and details regarding a required golf cart path and connections, requirement for a second gate, addition of non-compliance language, and extending the buildout date by three years. 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. 3503

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, AMENDING ORDINANCE NO. 2984 TO INCORPORATE CLARIFICATIONS OF THE DEVELOPMENT ORDER FOR SUN CITY FORT MYERS (N.K.A. PELICAN PRESERVE), A DEVELOPMENT OF REGIONAL IMPACT LOCATED EAST OF INTERSTATE NO. 75 IN SECTIONS 1 & 2, TOWNSHIP 45 SOUTH, RANGE 25 EAST AND SECTION 35, TOWNSHIP 44 SOUTH, RANGE 25 EAST; PROVIDING FOR FINDING OF FACT CONDITIONS OF APPROVAL, CONCLUSIONS OF LAW AND ADMINISTRATIVE REQUIREMENTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Marie Adams, CMC, City Clerk, administered the oath to those persons who would give testimony during the public quasi-judicial hearing. Councilman Wright stated that he had no exparte communication on the ordinance to incorporate clarifications of the Development Order for Sun City Fort Myers since the last public quasi-judicial hearing. Councilman Streets stated that he met with Paul Fish and other representatives of Pelican Preserve on February 26, 2009, at 1:00 o'clock p.m. in the City Council Office pertaining to different issues. Councilman Simms stated that he had a meeting February 26, 2009, and talked about the particulars on the ordinance to incorporate clarifications of the Development Order for Sun City Fort Myers. Mayor Humphrey stated that he discussed with the residents and Paul Fish, resident of Pelican Preserve, the issues that related to the golf cart, the east-west road, and to the deceleration lane and the ordinance. Mayor Humphrey stated that he had a conversation with Ken Heatherton, Executive Director, Southwest Florida Regional Planning Council, in regards to the rules and issues pertaining to this particular Development of Regional Impact Development Order and whether this would be a substantial deviation to where it was necessary. Mayor Humphrey stated that he received a message from Paul Fish that there may be a continuance of the hearing on March 2, 2009. Mayor Humphrey stated that all communications took place within the last 2 weeks. Councilman Flanders stated that Paul Fish and Carole Brokke met on Wednesday, February 25, 2009, at 1:30 o'clock p.m. for approximately 30 minutes on the characteristics of the proposed ordinance. Councilman Flanders stated that at that time Paul Fish and Carole Brokke were in favor of the proposed ordinance. Councilman Flanders stated that it was a general meeting to review the ordinance and express their support of the ordinance as of Wednesday, February 25, 2009. Councilman Henderson stated that he met with Carole Brokke, Jan Greer, and Paul Fish on Thursday, February 26, 2009, in his City Council office at 2:00 o'clock p.m. for approximately 25 minutes and had a general discussion centered on the merits and dynamics of Pelican Preserve. Councilman Henderson stated that the crash gate, golf cart east-west road, the concept of a golf cart trail that would facilitate transitioning to and from commercial facilities near Pelican Preserve was discussed. Councilman Henderson stated that a deceleration lane was discussed. Councilman Leonardo stated that he had numerous conversations with Paul Fish, as a resident of Pelican Preserve and representative of Ward 6 generally to hear input from residents. Councilman Leonardo stated that he met on January 9, 2009 with Nicole DeVaughn, Planner, Planning Division, Community Development Department, William P. Mitchell, City Manager, Grant W. Alley, City Attorney, and William Spikowski, Planning Board member, for clarification and background on the proposed ordinance. Attorney Alley stated that Neale Montgomery, Esquire, Pavese Law Firm, representing

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WCI Communities, Inc. and Chris Van Hise, Esquire, Abel Band Law Firm, Sarasota, representing Fran Miller, 10512 Avilla Circle, and Dick Hargrave, 10504 Avilla Circle, Pelican Preserve, were present. Attorney Alley stated that a continuance was being recommended of proposed Ordinance No. 3503 based on advice from the City Attorney and Nancy Stroud, Esquire, Lewis Stroud & Deutsch, PL, outside land use attorney, representing the City. Attorney Alley stated that alternative language was presented on February 27, 2009, identifying the crash gate and concurrency requirements and concerns of WCI Communities, Inc. Attorney Alley stated that the alternative language was being incorporated into the proposed ordinance. Attorney Alley stated that a process for notice had to be perfected for the Planning Board. Attorney Alley stated that Notice will be provided, the Planning Board will review the ordinance and make a recommendation, and the proposed ordinance will be presented to City Council. Attorney Alley stated that the proposed ordinance should be sent to the Planning Board for further recommendation and then come to City Council to be consistent with City Code and applicable laws. Councilman Flanders stated that the proposed ordinance was consistently being continued and in the future the process should be streamlined. Councilman Flanders stated that a number of hours and resources have been utilized and there was still a continuance mode. Mayor Humphrey stated that the process was quasi-judicial and the initial planned unit development and ordinance was adopted over 8 years ago. Mayor Humphrey stated that the clarifications to the Development Order were not a substantial deviation. Mayor Humphrey stated that the City should not acquiesce to appear before the Regional Planning Council. Mayor Humphrey stated that the City Attorney and Attorney Stroud indicated that an appearance before the Regional Planning Council was not necessary. Mayor Humphrey stated that City should not indicate any jurisdiction by the Regional Planning Council. Attorney Alley stated that the experts qualified to rule on whether the clarifications to the Development Order was a substantial deviation have presented their opinions that it was not a substantial deviation. Attorney Alley stated that if the public hearing for the proposed ordinance were continued, the appropriate notice would be published with a date and a time for a Planning Board. Attorney Alley stated that the proposed ordinance with the recommendation of City employees would be presented to the Planning Board for consideration. Attorney Alley stated that the notice would include property owners within 300 feet and there was a process that would be followed pursuant to the City Code. Attorney Alley stated that the Planning Board would meet and have an opportunity to review the revised language submitted by WCI Communities, Inc. and the scrivener's error identified by Anthony P. Pires, Jr., Esquire, Woodward, Pires & Lombardo, P.A., representing Gateway Services Community Development District. Attorney Alley stated that the Planning Board would make a recommendation in an advisory capacity to City Council with City employee response to their recommendation. It was moved by Councilman Leonardo, seconded by Councilman Flanders to continue the public hearing, set a date certain for the proposed ordinance to be presented to City Council for a vote, and direct the City Manager to become involved in shepherding the process through the system. Councilman Leonardo stated that the process had taken too long. Mayor Humphrey stated that the date for the continued public hearing would be April 20, 2009. Attorney Van Hise stated that the process had taken 21 months and his clients were frustrated. Attorney Van Hise stated that his clients were amenable to the concept of continuing the public hearing to April 20, 2009. Attorney Van Hise stated that procedurally there would be a Planning Board meeting on April 1, 2009, and the proposed ordinance presented to City Council on April 20, 2009, which was 45 days. Councilman Leonardo stated that the time would be 45 days as long as all public notifications of meeting were complied with and there were no additional mistakes in the process. Mr. Mitchell stated that it was possible to meet the advertising requirements.

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Attorney Alley stated that one of the purposes of the continuance was for consideration of the language proposed by WCI Communities, Inc. on February 12, 2009, and the concern of Councilman Leonardo regarding concurrency. Attorney Alley stated that the language provided by Attorney Montgomery to address the concurrency requirement was approved but the City had counter language which was being forwarded to Attorney Montgomery for comment. Attorney Alley stated that in general the same process was being utilized which provided for golf cart paths to commercial areas as depicted on Map H, the turn lane, and the crash gate for the east-west interconnect. Attorney Alley stated that there were a number of areas where WCI Communities, Inc. had complied with the ordinance. Attorney Alley stated that Attorney Pires had forwarded revisions to the proposed ordinance which had been incorporated. Attorney Montgomery stated that there had not been an agreement on the issues by WCI Communities, Inc. Attorney Montgomery stated that a concern that had been repeatedly raised was to ensure that the correct process was followed. Attorney Montgomery stated that in the course of facilitating the matter between WCI Communities, Inc. and residents of Pelican Preserve, language was drafted with respect to WCI Communities, Inc. concerns. Attorney Montgomery stated that WCI Communities, Inc. objected to the crash gate because it had an effect on the distribution of traffic and WCI Communities, Inc. should not be penalized because of decisions made by others in regard to the project. Attorney Montgomery stated that progress could be made if the concerns by WCI Communities, Inc. were addressed. Attorney Montgomery stated that the WCI Communities, Inc. would have to appeal or take other action if the language was not included in the proposed ordinance. Mayor Humphrey stated that the number of residential units in Section 1.A.9. was not consistent with the number approved. Mayor Humphrey stated that the issue of the east-west road, the history, and conditions should be addressed. Mayor Humphrey stated that Map H, the master concept plan, did not have an east-west connection when reviewed by the Regional Planning Council. Mayor Humphrey stated that there was a question on whether a crash gate was needed. Mayor Humphrey stated that Map H showed the commercial and number of residential units and the ordinance should be consistent. There being no one else present to be heard, it was moved by Councilman Leonardo, seconded by Councilman Flanders to continue the public hearing to April 20, 2009.

**NO. 16 PUBLIC HEARING: SECOND READING - ORDINANCE NO. 3504 AMENDING LAND DEVELOPMENT CODE, CHAPTER 110, FLOOD PREVENTION AND PROTECTION** Pursuant to advertisement in The News Press, issue of February 18, 2009, Affidavit of Publication on file, a public hearing was held at this time on amending Land Development Code, Chapter 110, Flood Prevention and Protection, by revising definitions. 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. 3504

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, SUB-PART B, LAND DEVELOPMENT CODE, CHAPTER 110 FLOOD PREVENTION AND PROTECTION; ARTICLE I. IN GENERAL, SECTION 110-1 DEFINITIONS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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Albert Danbrose, Florida Registered Architect, stated that the Flood Elevation rule should be changed. Mr. Danbrose stated that the current rule punished people for owning an older structure and trying to renovate it. Mr. Danbrose stated that the rule provided a structure appraised at \$100,000.00 only \$50,000.00 could be spent without substantial permitting. Mr. Danbrose stated that the City utilized every permit value issued since 1979 or about 30 years. Mr. Danbrose stated that residents that purchased a house without knowing the history of permits issued over the lifespan which could prevent improvement of the property. Mr. Danbrose stated that there was the same problem with commercial areas. Mr. Danbrose stated that more improvements took place in commercial structures. Mr. Danbrose stated that the change did not minimize the responsibility to Federal Emergency Management Agency but modernized the ordinance to meet regulations of other jurisdictions. It was moved by Councilman Leonardo, seconded by Councilman Flanders to adopt the ordinance. Brent Brewster, Building Inspector III/Plans Examiner, Building, Permitting & Inspection Division, Community Development Department, stated that the City adopted the Federal Emergency Management Agency Flood Insurance Rate Maps on April 2, 1979. Mr. Brewster stated that substantial improvement was the life of the structure from what existed on April 2, 1979. Mr. Brewster stated that when permit applications within a Federal Emergency Management Agency flood zone were made, the City reviewed all permits issued from April 2, 1979, and they were added to a substantial improvement. Mr. Brewster stated that houses constructed in the 1950s had 30 years of penalties against the building. Mr. Brewster stated that the flood zones had increased in excess of 3 times within the City based on the August 28, 2008, Federal Emergency Management Agency Flood Insurance Rate Maps. Mr. Brewster stated that the small addition to WINK-TV was considered a substantial improvement and the building had to be flood proofed. Councilman Flanders stated that the flood maps had changed and covered more area than the maps that were adopted in 1979. Mr. Brewster stated that the City was penalizing structures constructed in 1979, even when the building was not in a flood plain. Mr. Brewster stated that permits for improvements to any structure within a high hazard flood zone must be considered from 1979. Councilman Flanders stated that additions completed during the 1980s had exhausted the capacity to add to the structure because of the conforming additions before becoming part of the flood plane. Mr. Brewster stated that the permits for 5 years would be considered as part of the substantial improvements. There being no one else present to be heard, it was moved by Councilman Leonardo, 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. Ordinance was adopted at 6:14 o'clock p.m.

**NO. 17 PUBLIC HEARING: SUBMITTAL OF HISTORICAL LANDMARK NOMINATION TO DESIGNATE MCGREGOR BOULEVARD RIGHT-OF-WAY FROM U.S. 41 TO THE CITY LIMITS AT ROYAL PALM BOULEVARD AS A LOCAL HISTORIC SCENIC HIGHWAY TO THE HISTORIC PRESERVATION COMMISSION** Pursuant to advertisement in the News Press, issue of February 18, 2009, Affidavit of Publication on file, a public hearing was held at this time on the submittal of a Historic Landmark Nomination to designate McGregor Boulevard right-of-way from U.S. 41 to the City limits at Royal Palm Boulevard as a local historic scenic highway to the Historic Preservation Commission.

William P. Mitchell, City Manager, left the meeting at 6:15 o'clock p.m.

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Councilman Flanders stated that McGregor Boulevard had a rich history, beautiful with serenity and defining royal palms. Councilman Flanders stated that a major characteristic of McGregor Boulevard was that it was a high volume arterial roadway that went through single family neighborhoods. Councilman Flanders stated that because of the major roadway status a lot of things happened that obstructed the beauty of McGregor Boulevard such as an excessive amount of street signage, center turn lane, different kinds of crosswalks, questionable speed limits, and restrictions on sight visibility from the side streets due to the widening of the road. Councilman Flanders stated that the graphics on McGregor Boulevard were inconsistent with different types of signage for the same issues. Councilman Flanders stated that intersection improvements proposed by Lee County at Colonial Boulevard and by the Florida Department of Transportation at McGregor Boulevard and Victoria Avenue and Altamont Avenue were a concern. Councilman Flanders stated that designation as a local historic scenic highway required major improvements in the right-of-way to go through a public hearing process before the Historic Preservation Commission. Councilman Flanders stated that the public would be able to participate and voice opinions on major improvements. Councilman Flanders stated that the Historic Preservation Commission would hold a public hearing every time a change was made within the McGregor Boulevard right-of-way. Councilman Flanders stated that it was constructive for the future of McGregor Boulevard to designate it as a local historic scenic highway.

William P. Mitchell, City Manager, returned to the meeting at 6:18 o'clock p.m.

Councilman Flanders stated that residents were concerned about private property rights and the designation would not infringe on private property rights. Councilman Flanders stated that curb cuts or driveway cuts onto McGregor Boulevard by private property owners would be reviewed by the Historic Preservation Commission. Councilman Flanders stated that one objection letter was received. Mayor Humphrey stated that comments had been received in favor of the historic designation. Frank Mann, Lee County Board of Commissioners, stated that he offered legislation in Tallahassee that designated McGregor Boulevard as a scenic historic highway 30 years ago. Mr. Mann stated that it would be helpful to bring the portion of McGregor Boulevard within the City limits up to date and do things that can be controlled by the City. Mr. Mann stated that the application should be submitted to the Historic Preservation Commission. Mr. Mann stated that McGregor Boulevard needed to be preserved. Mr. Mann stated that McGregor Boulevard was a model for other roads and should be protected. Mayor Humphrey stated that Palm Beach Boulevard and Dr. Martin Luther King Jr. Boulevard should have the same distinction as McGregor Boulevard. Pamela Nolan, 1410 Olmeda Way, stated that the vehicle accidents along McGregor Boulevard had decreased but the ones that happened were more catastrophic. Ms. Nolan stated that there should be no more signs on McGregor Boulevard. Ms. Nolan stated that signs were becoming blight in areas where there was an excessive signage. Ms. Nolan stated that property owners along McGregor Boulevard knew the designation of local historic scenic highway may require sacrifice and traffic control changes would impact residents. Ms. Nolan stated that the sacrifices were minor compared to the long term benefit of McGregor Boulevard. Ms. Nolan stated that action needed to be taken to protect McGregor Boulevard in the future. Dan Moser, 1449 Linhart Avenue, Chair, Bicycle and Pedestrian Advisory Board, stated that when Florida Department of Transportation widened McGregor Boulevard traffic calming consisting of medians was requested. Mr. Moser stated that the medians made it difficult for bicyclists to utilize the roadway. Mr. Moser stated that the sidewalks were being utilized by bicyclists. Mr. Moser stated that it was illegal to ride bicycles on the sidewalks and instead of

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narrowing or removing the median the law was changed to allow bicycles on the sidewalks. Mr. Moser stated that the sidewalks along McGregor Boulevard were not conducive to bicycle riding. Mr. Moser stated that the implications for creating a multi-use pathway in the McGregor Boulevard right-of-way should be addressed. Mr. Moser stated that the medians should be removed or redesigned to make it possible for on-road bicycling. Mr. Moser stated that the Police Department was restricting the through truck traffic to reduce noise and maintenance.

Councilman Leonardo left the meeting at 6:30 o'clock p.m.

Gina Sabiston, Vice-Chair, Historic Preservation Commission, stated that there had been an application before the Historic Preservation Commission which was tabled because of a change in the ordinance that the property owner had to present the application. Ms. Sabiston stated that the Historic Preservation Commission cooperated with residents and concerns could be addressed. Ms. Sabiston stated that McGregor Boulevard was the gem of the City. Ms. Sabiston stated that the State legislation did not provide adequate protection for McGregor Boulevard. Margaret Paulus, 2642 McGregor Boulevard, stated that McGregor Boulevard should be designated as a local historic scenic highway.

Councilman Leonardo returned to the meeting at 6:33 o'clock p.m.

It was moved by Councilman Flanders, seconded by Councilman Henderson to direct staff to submit an application to designate the McGregor Boulevard right-of-way as a local historic scenic highway to the Historic Preservation Commission. Councilman Flanders stated that there were no locations along McGregor Boulevard where a property owner would want an extra curb cut unless a house was demolished, a new house built with a reconfigured driveway. Councilman Flanders stated that exemptions provided an opportunity for undesired things to happen. Mayor Humphrey stated that the right-of-way on McGregor Boulevard in front of Giovanni's Little Italian Market and Deli, 4600 McGregor Boulevard, had a right-of-way of 25 feet. Mayor Humphrey stated that there were parts of McGregor Boulevard that needed to be reviewed. Mayor Humphrey stated that the property owner on the west side of McGregor Boulevard across from Giovanni's Little Italian Market and Deli had the sewer system installed by Lee County and provided the City with extra right-of-way. Mayor Humphrey stated that there were parts of McGregor Boulevard where the width of the right-of-way changed. Mayor Humphrey stated that the City may be able to follow the provision that the City had maintained the right-of-way for 4 years and file the necessary documents to confirm control of the property. Mayor Humphrey stated that Lee County Department of Transportation had a lot of the history on McGregor Boulevard because of the litigation several years ago. There being no one else present to be heard, it was moved by Councilman Flanders, seconded by Councilman Henderson and unanimously carried to submit an application to designate the McGregor Boulevard right-of-way as a local historic scenic highway to the Historic Preservation Commission.

The meeting recessed and Mayor Humphrey stepped down from the chair at 6:40 o'clock p.m.

The meeting reconvened and Mayor Pro tem Streets assumed the chair at 6:52 o'clock p.m.

**NO. 18 PERMISSION TO ADVERTISE: FIRST READING - ORDINANCE NO. 3506 AMENDING CITY CODE CHAPTER 90, STORMWATER MANAGEMENT BY PROVIDING REGULATIONS AND A METHOD OF COLLECTION OF STORMWATER MANAGEMENT FEES** Mayor Pro tem Streets introduced and caused to be read by Grant W. Alley, City

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Attorney, by its title, for the first reading an ordinance as hereinafter set out entitled:

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 ordinance provided for a definition of impervious area but there were no specifics about impervious area. Councilman Flanders stated that there were products that were hard and provided a base for a driveway and pavers that allowed water to penetrate through and percolate into the ground. William P. Mitchell, City Manager, stated that the City would be flexible and considerate in terms of surfaces that could be established that they percolated but hard

surface contributing to runoff would be included in the stormwater management fee. Councilman Flanders stated that the use of materials that allowed 50 percent or greater percolation should be encouraged. Saeed Kazemi, Interim Director, Public Works Department, stated that the use of pervious materials would assist in the stormwater management requirement. Mr. Kazemi stated that each surface would be considered on a case by case basis. Mr. Kazemi stated that the property owner would receive credits based on the pervious area. Mr. Kazemi stated that the impervious area was currently based on Lee County Property Appraiser information. Councilman Flanders stated that the ordinance provided that impervious area was an area that causes water to run off the surface at a greater rate, increased rate than that occurring under natural conditions. Councilman Flanders stated that anything put down other than natural soil would cause the water to run off at a faster rate. Councilman Flanders stated that the ordinance did not allow flexibility for what was impervious and what was pervious. Mr. Mitchell stated that the materials known in the industry to be pervious would be identified. Mr. Kazemi stated that application would have to be made for the credit. It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried to advertise for a public hearing.

**NO. 18A PERMISSION TO ADVERTISE RESOLUTION ESTABLISHING THE STORMWATER FEE** Mayor Pro tem Streets introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the first reading a resolution as hereinafter set out entitled:

RESOLUTION NO.

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

Mayor Pro tem Street stated that the stormwater fee would be \$.96 per standard impervious unit which was equal to 500 square feet of impervious surface for each tax parcel. It was moved by Councilman Henderson, seconded by Councilman Flanders and unanimously carried to advertise for a public hearing.

**NO. 19 PERMISSION TO ADVERTISE: INVITATION FOR PROPOSALS FOR DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA OF A PUBLIC UTILITY EASEMENT TO PROVIDE ELECTRICAL POWER TO RAW WATER PRODUCTION WELL P-18, LOCATED ON ORTIZ AVENUE, EAST OF ARCADIA STREET, AND NORTH OF VINCE SMITH DRIVE** Grant W. Alley, City Attorney, stated that pursuant to Florida Statute 160.38, an Invitation for Proposals must be advertised for the disposition of a public utility easement located on Ortiz Avenue, east of Arcadia Street, and north of Vince Smith Drive, real property in a Community Redevelopment Area. Attorney Alley stated that the intent was to convey a 10 foot by 1,926.64 foot, more or less, public utility easement to provide electrical power to raw water production Well P-18. Attorney Alley stated that the easement was described as follows:

A tract or parcel of land 10 feet wide, lying in Section 28, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida, being more particularly described as follows:

Commencing at the northwest corner of said Section 28, thence run S00°46'14"E along the west line of the Northwest Quarter (NW-1/4) of said Section 28 a distance of 1,556.11 feet to an intersection with the north line of a 100 foot wide Florida Power and Light Easement recorded

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in Official Records Book 383, Page 493, Lee County records; thence run N88°11'39"E along said north line a distance of 1,960.62 feet to the Point of Beginning.

From said Point of Beginning thence run N01°48'21"W for 10 feet; thence run N88°11'39"E, 10 feet north of and parallel with the north line of said Florida Power and Light 100 foot wide easement for 1,926.82 feet to an intersection with the west right-of-way of Ortiz Avenue; thence run S00°48'04"E along said west right-of-way a distance of 10.00 feet to an intersection with said north Florida Power and Light Easement line; thence run S88°11'39"W along said north easement line a distance of 1,926.64 feet to the Point of Beginning.

Said parcel contains 19,267 square feet or 0.44 acres.

Bearings herein are based on State Plane Coordinates (NAD 83/90) for the Florida West Zone where the west line of the Northwest Quarter (NW 1/4) of Section 28 bears S00°46'14"W.

It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried to advertise for a public hearing.

**NO. 20 RESOLUTION NO. 2009-10 AMENDING THE RATES AT THE SKATIUM, 2250 BROADWAY AND RESCINDING RESOLUTION NO. 2007-20** 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. 2009-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE RATES FOR THE USE OF PARKS AND RECREATION BUILDINGS AND FACILITIES; RESCINDING RESOLUTION NO. 2007-20; AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Wright, seconded by Councilman Henderson and unanimously carried to adopt the resolution. Resolution was adopted at 7:04 o'clock p.m.

**NO. 21 FINAL PLAT FOR CHALLENGER BOULEVARD EXTENSION 9321-9377 BEN C. PRATT/SIX MILE CYPRESS PARKWAY AS REQUESTED BY COLONIAL SQUARE ASSOCIATES, LLC AND CYPRESS LAKES ASSOCIATES, LLC, OWNERS** William P. Mitchell, City Manager, stated that Colonial Square Associates, LLC and Cypress Lakes Associates, LLC, owners, requested approval of the final plat for Challenger Boulevard Extension, 9321-9377 Ben C. Pratt/Six Mile Cypress Parkway. Mr. Mitchell stated that the plat included 1 tract on 4.39 acres, more or less, for public road right-of-way maintained by the City. Mr. Mitchell stated that the applicant requested variances combining the preliminary and final plat processes and eliminating the 10 foot utility easement along each side of the proposed right-of-way. It was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to approve the final plat for Challenger Boulevard Extension, containing 4.39 acres, more or less, located at 9321-9377 Ben C. Pratt/Six Mile Cypress Parkway, including variances combining the preliminary and final plat processes and eliminating the 10 foot utility easement along each side of the proposed right-of-way.

**NO. 22 TEMPORARY ROAD MAINTENANCE EASEMENT FROM COLONIAL SQUARE ASSOCIATES, LLC AND CYPRESS LAKES ASSOCIATES, LLC FOR A NON-EXCLUSIVE TEMPORARY EASEMENT FOR A PORTION OF THE CUL-DE-SAC AT THE EASTERN TERMINUS OF CHALLENGER BOULEVARD EXTENSION** William P. Mitchell, City Manager, stated that the Temporary Road Maintenance Easement from Colonial Square Associates, LLC and Cypress Lakes Associates, LLC was for a non-exclusive temporary easement for a portion of the cul-de-sac at the eastern terminus of Challenger Boulevard Extension. Mr. Mitchell stated that the easement was described as follows:

A portion of land from Instrument #2007000034970 and Instrument #2007000034966 and a portion of land from Instrument #2007000034968 of the Public Records of Lee County, Florida, lying in Section 33, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida, being more particularly described as follows:

Commencing at the southeast corner of Section 33, Township 44 South, Range 25 East; thence along the east line of Section 33, North 00°37'49" West, a distance of 2,521.23 feet to the point of beginning:

Thence along said section line, North 00°37'49" West, a distance of 125.58 to the East Quarter corner of Section 33; thence continuing along said section line North 00°48'19" West, a distance of 24.42 feet; thence leaving the east line of Section 33, South 89°04'29" West, a distance of 100.73 feet; thence North 00°55'31" West, a distance of 35.00 feet; thence North 89°04'29" East, a distance of 150.00 feet; thence South 00°55'31" East, a distance of 185.00 feet; thence South 89°04'29" West, a distance of 50.00 feet to the point of beginning.

Containing 0.2891 acres, more or less.

It was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to accept the Temporary Road Maintenance Easement from Colonial Square Associates, LLC and Cypress Lakes Associates, LLC for a non-exclusive temporary easement for a portion of the cul-de-sac at the eastern terminus of Challenger Boulevard Extension.

**NO. 23 LICENSE AGREEMENT WITH PAVESE, HAVERFIELD, DALTON, HARRISON, AND JENSEN, LLP FOR 50 PERCENT OF THE COST OF IMPROVEMENTS FOR A PARKING LOT AT 1810 LEE STREET AND LEASE OF 45 PARKING SPACES TO THE CITY** William P. Mitchell, City Manager, stated that the License Agreement, in the not-to-exceed amount of \$80,000.00, with Pavese, Haverfield, Dalton, Harrison, and Jensen, LLP, was for 50 percent of the cost of improvements for a parking lot at 1810 Lee Street and lease of 45 parking spaces to the City. It was moved by Councilman Flanders, seconded by Councilman Simms to approve License Agreement, in the not-to-exceed amount of \$80,000.00, with Pavese, Haverfield, Dalton, Harrison, and Jensen, LLP for 45 parking spaces. Mr. Mitchell stated that \$80,000.00 was a reasonable fee and the City would receive credit in parking equal to the amount contributed to construction costs. Mr. Mitchell stated that forty-five additional spaces would be made available in the Main Street Garage for retail, commercial, and downtown business use. It was moved by Councilman Flanders, seconded by Councilman Simms and unanimously carried to approve License Agreement, in the not-to-exceed amount of \$80,000.00, with Pavese, Haverfield, Dalton, Harrison, and Jensen, LLP for 45 parking spaces.

MINUTES  
March 2, 2009

**PUBLIC COMMENT - NON-AGENDA ITEMS** Anthony Thomas, Jr., political activist, stated that the Police Chief had a round table discussion with 20 community members to discuss creating a mission statement. Mr. Thomas stated that two white police officers beat a black man outside the Southern Christian Leadership Conference office in the presence of several community leaders including Willie Green, former president of the local chapter of the National Association for the Advancement of Colored People on February 28, 2009. Mr. Thomas stated that City Council approved a police chief that should not have been confirmed. Mr. Thomas stated that over 5,000 registered voters signed a petition for a citizens oversight panel. Mr. Thomas stated that City Council should not appoint a Citizens Advisory Board. Mr. Thomas stated that the citizens of the City want a Citizens Oversight Panel with elected members and subpoena powers. Mr. Thomas stated that the City Council had an opportunity to act and failed. No action was taken.

**PUBLIC COMMENT - NON-AGENDA ITEMS:** Taunya Cola, 1911 High Street, stated that if people interested in having an oversight board and committed against the Police Chief and Police Department they would be present. Ms. Cola stated that Mr. Thomas was one man, one voice, and did not speak for her or any other citizens. Ms. Cola stated that the method of selecting the Chief of Police should not be changed. No action was taken.

**NO. 23A AGENDA FOR LEE COUNTY DELEGATION MEETING IN TALLAHASSEE, FLORIDA** Councilman Simms stated that there should be an agenda for the meeting with the Lee County delegation in Tallahassee in March 2009. Councilman Simms stated that suggestions should be obtained and prioritized. Councilman Simms stated that Keith Arnold, lobbyist for the City, should be the liaison for the City. No action was taken.

There being no further business to come before the meeting, it was moved by Councilman Simms, seconded by Councilman Henderson and unanimously carried to adjourn at 7:15 o'clock p.m.

ATTEST:

Marie Adams, CMC  
City Clerk