

## **MINUTES**

March 1, 2010

The City Council of the City of Fort Myers, Florida, met in regular session at Oscar M. Corbin, Jr. City Hall, 2200 Second Street, its regular meeting place in the City of Fort Myers, Florida, on Monday, March 1, 2010, at 4:27 o'clock p.m. Present were Mayor Randall P. Henderson, Jr., presiding, Council Members Teresa Watkins Brown, Johnny W. Streets, Jr., Levon Simms, Michael Flanders, Forrest Banks, and Thomas C. Leonardo. Also present were William P. Mitchell, City Manager, Marie Adams, MMC, City Clerk, and Grant W. Alley, City Attorney. Absent: None.

The meeting was opened with prayer led by Dr. Don Strange, Winkler Road Baptist Church.

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

### **NO. 1 PROCLAMATION RECOGNIZING MARCH 7, 2010 THROUGH MARCH 13, 2010 AS NATIONAL WEEK OF PRAYER FOR THE HEALING OF ACQUIRED IMMUNE DEFICIENCY SYNDROME, AIDS**

Mayor Henderson read and presented a proclamation to Judith Hartner, MD, MPH, Director, Lee County Health Department recognizing March 7, 2010, through March 13, 2010, as National Week of Prayer for the Healing of Acquired Immune Deficiency Syndrome, AIDS.

### **NO. 2. PRESENTATION OF THE COLONIAL BOULEVARD OVERPASS AND WIDENING PROJECT FROM THE CALOOSAHATCHEE RIVER TO EAST OF INTERSTATE 75 BY LEE COUNTY DEPARTMENT OF TRANSPORTATION**

Don DeBerry, Engineering Manager, Public Works, Lee County Department of Transportation, stated that the project team would develop the best project alternative for the Colonial Boulevard overpass and widening project from the Caloosahatchee River to east of Interstate 75 to present to the Lee County Board of County Commissioners to be compared to the no-build alternative for selection. Mr. DeBerry stated that support for the no-build would be presented to the Lee County Board of County Commissioners. Mr. DeBerry stated that the evaluation of alternatives to the improvements proposed along the Colonial Boulevard corridor included other roadways, new roadways, and something other than improvements to Colonial Boulevard. Mr. DeBerry stated that the concerns for improvement to other roads and new roadways should be addressed to the Metropolitan Planning Organization. Mr. DeBerry stated that the Colonial Boulevard Overpass and Widening Project began at the Metropolitan Planning Organization level as part of the Long Range Transportation Plan. Mr. DeBerry stated that Colonial Boulevard Overpass and Widening Project was compared other alternative corridors and other modes of alternative transportation. Mr. DeBerry stated that the Long Range Transportation Plan was used to prioritize projects for federal, state, and local funding and the tool used to evaluate alternative corridors other than Colonial Boulevard as well as transit alternatives. Mr. DeBerry stated that the priorities from the Long Range Transportation Plan were presented to the Lee County Board of County Commissioners once a year for inclusion in the Capital Improvement Plan. Mr. DeBerry stated that the Capital Improvement Plan was funded from gas taxes, impact fees, toll revenues, and a property tax loan program. Mr. DeBerry stated that there was a revolving loan program with the General Fund to ensure projects were completed during the difficult economic conditions. Mr. DeBerry stated that the phases of the project were project development and environment study to determine alignment, design, right-of-way, and construction. Mr. DeBerry stated that the Colonial Boulevard Overpass and Widening Project began as a Bi-County Corridor Study in October 2003 with the combined efforts of the City of Punta Gorda, City of Cape Coral, Charlotte County, the City of Fort Myers, Lee County, and Florida Department of Transportation. Mr. DeBerry stated that the Bi-County Corridor was 36 miles starting at Jones Loop Road and Interstate 75 in Charlotte

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County, through the City of Cape Coral and the City of Fort Myers to Interstate 75 via Colonial Boulevard. Mr. DeBerry stated that the anticipated public hearing and completion date for the Project Development and Environment Study for Colonial Boulevard Overpass and Widening Project was 2010. Mr. DeBerry stated that Lee County was working in conjunction with the Federal Highway Administration and Florida Department of Transportation on the Colonial Boulevard Overpass and Widening Project. Mr. DeBerry stated that part of the Colonial Boulevard corridor was a state road. Mr. DeBerry stated that crossing and improving the Interstate 75 area which involved a federal highway. Mr. DeBerry stated that the value engineering project of the Colonial Boulevard Overpass and Widening Project began in November 2008 and alternative solutions were being reviewed within the bounds of the Project Development and Environment Study and financing alternatives. Mr. DeBerry stated that the Project Development and Environment Study was in excess of \$950,000,000.00. Mr. DeBerry stated that the scope of the Project Development and Environment Study would be narrowed to an affordable amount and still provide the needs required. Mr. DeBerry stated that the Project Development and Environment Study would provide the following:

- Accommodate the expected traffic growth on Colonial Boulevard at an acceptable level of service
- Improve safety and hurricane evaluation
- Provide improved pedestrian and bicycle facilities
- Accommodate the expansion of Lee County Transit System through bus rapid transit

Mr. DeBerry stated that the Bi-County Corridor evaluation consisted of reviewing new corridors and existing parallel corridors which had a number of associated obstacles. Mr. DeBerry stated that new river crossings and Interstate 75 interchanges were needed that were not feasible from an economic or environmental perspective. Mr. DeBerry stated that the conclusion in the Project Development and Environment Study was the improvements to the existing Colonial Boulevard corridor and basically the only feasible alternative that met the purpose and need of the project. Mr. DeBerry stated that possible alternatives were the enhancement of transit, intelligent transportation systems, and transportation system management. Mr. DeBerry stated that the elements of the alternatives would be incorporated into the Project Development and Environment solution or the final project value engineering solution. Mr. DeBerry stated that widening Colonial Boulevard to 8 or 10 lanes was considered.

Councilman Leonardo left the meeting at 4:56 o'clock p.m.

Mr. DeBerry stated that the expressway alternative considered included tolled or un-tolled, on structure, free frontage roads were a necessity for the project, minimizing retaining walls and maximizing the structure length, and an expressway on segmental structure which was one of the alternatives that would have allowed the ramps at McGregor Boulevard to be eliminated but the cost was extraordinary in the \$200,000,000.00 range. Mr. DeBerry stated that the no-build alternative would be considered. Mr. DeBerry stated that the best alternative against a no-build alternative at the end of the project would be presented to the Lee County Board of County Commissioners. Mr. DeBerry stated that Project Development and Environment Study concluded that the expressway alternatives met the purpose and need. Mr. DeBerry stated that the Metropolitan Planning Organization had identified the expressway on structure as a preferred alternative. Mr. DeBerry stated that the Project Development and Environment Study alternatives were not financially feasible force evaluation of the other engineering and financial alternatives that were considered with the value engineering project. Mr. DeBerry stated that objective was to improve traffic flow on

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Colonial Boulevard for the 20 year design life. Mr. DeBerry stated that a design would be financially feasible with public financing. Mr. DeBerry stated that frontage roads would function as the same as the current roadway. Mr. DeBerry stated that the Colonial Boulevard Overpass and Widening Project would coordinate with Bus Rapid Transit options. Mr. DeBerry stated that the use of retaining walls at overpass locations would be minimized.

Councilman Leonardo returned to the meeting at 4:58 o'clock p.m.

Mr. DeBerry stated that the project team was trying to provide major improvements in delay, accommodate Bus Rapid Transit, and reduce project cost. Mr. DeBerry stated that the project team was trying to reduce the cost of the Colonial Boulevard Overpass and Widening Project by one-half. Mr. DeBerry stated that the Colonial Boulevard Overpass and Widening Project was estimated at \$400,000,000.00. Mr. DeBerry stated that the cost was financially feasible with a tolled publicly bonded project. Mr. DeBerry stated that the advantages of the Colonial Boulevard Overpass and Widening Project were it would accommodate the Bus Rapid Transit and there would be a reduced delay and improvement in capacity along the corridor. Mr. DeBerry stated that the travel time on the expressway would be 10 minutes from the Caloosahatchee River past Interstate 75 in the build condition on the express lanes 20 years in the future versus 60 minutes on the existing roadway in 20 years. Mr. DeBerry stated that the traffic models on the free frontage roads indicate a 25 minute travel time from the Caloosahatchee River past Interstate 75 in 20 years. Mr. DeBerry stated that the Colonial Boulevard Overpass and Widening Project would improve the carbon footprint, reduce congestion, and take advantage of low construction costs. Mr. DeBerry stated that the disadvantage of the Colonial Boulevard Overpass and Widening Project was it obligated Lee County to a \$400,000,000.00 bond issue with all the associated risks. Mr. DeBerry stated that a secondary pledge would be required to cover the bond issue. Mr. DeBerry stated that Lee County would be required to accept jurisdictional transfer of Colonial Boulevard from the Florida Department of Transportation. Mr. DeBerry stated that some of the funds utilized were a Revolving Loan Program from the State through the Toll Revolving Trust Fund. Mr. DeBerry stated that the Project Development and Environment Study should be completed by the end of summer 2010. Mr. DeBerry stated that value engineering for the Colonial Boulevard Overpass and Widening Project was being conducted simultaneously. Councilman Flanders stated that the primary focus was the McGregor Boulevard and Colonial Boulevard intersection. Councilman Flanders stated that McGregor Boulevard should be preserved as a 2 lane historic highway. Councilman Flanders stated that the residents were adamant about not putting ramps on McGregor Boulevard. Councilman Flanders stated that the residents wanted no ramps on McGregor Boulevard and to show the alternative intersection without ramps. Councilman Flanders stated that cost was insignificant compared to the cost of the Colonial Boulevard Overpass and Widening Project. Mr. DeBerry stated that eliminating ramps on McGregor Boulevard was included in the Project Development and Environment Study alternative package and was available to the public. Mr. DeBerry stated that eliminating the ramps on McGregor Boulevard added \$200,000,000.00 to the project. Mr. DeBerry stated that the ramps on McGregor Boulevard could be eliminated by constructing a third level over the existing structure beginning in the middle of the Caloosahatchee River. Mr. DeBerry stated that the alternative with no ramps at McGregor Boulevard had been geographically designed. Councilman Flanders stated that there was a cost to the detriment of McGregor Boulevard for the residents. Mr. DeBerry stated that a design had been completed in conjunction with Post Buckley Schuh & Jernigan during the Project Development and Environment Study because of the issue with the McGregor Boulevard interchange. Mr. DeBerry stated that HDR,

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value engineering consultant, was requested to review the alternative for the McGregor Boulevard interchange to determine if there was a feasible plan. Mr. DeBerry stated that the alternative plan for eliminating McGregor Boulevard was part of the Project Development and Environment Study. Councilman Flanders stated that the plan for no ramps on McGregor Boulevard should be presented to the public. Councilman Flanders stated that serious consideration should be given to building an expressway without the detriment to McGregor Boulevard. Councilman Flanders stated that congestion would not be reduced by placing ramps on McGregor Boulevard. Mr. DeBerry stated that the overall Colonial Boulevard Overpass and Widening Project goal was to reduce congestion. Mr. DeBerry stated that there would be some interchanges that would suffer and McGregor Boulevard was difficult due to the constrained nature of the road. Mr. DeBerry stated that the traffic counts would be posted on the website. Councilman Flanders stated that City Council should issue a proclamation or resolution to the Lee County Board of County Commissioners so that they could provide the information to the consultants. Councilman Flanders stated that the discussions with the Lee County Board of County Commissioners had been favorable. Councilman Banks stated that the primary concern of the 20 people from Ward 5 at the stakeholders meeting was the McGregor Boulevard intersection. Councilman Banks stated that McGregor Boulevard should not be degraded. Councilman Leonardo stated that the majority of the Colonial Boulevard Overpass and Widening Project was in Ward 6. Councilman Leonardo stated that there were no constituents in Ward 6 who indicated they were in favor of the Colonial Boulevard Overpass and Widening Project. Councilman Leonardo stated that the traffic flow of Colonial Boulevard should be improved without building overpasses. Councilman Leonardo stated that people would not want to pay a round trip toll of \$7.00 to \$8.00, which was \$2.00 per mile. Councilman Leonardo stated that the segment east of Interstate 75 would destroy the appearance at the front of Colonial Country Club, Pelican Preserve, and The Forum II. Mr. DeBerry stated that Colonial Boulevard returned to grade before the bridge over the Six Mile Slough and the second entrance into The Forum II. Councilman Leonardo stated that the Colonial Boulevard Overpass and Widening Project would have a negative effect on commerce along Colonial Boulevard corridor. Mayor Henderson stated that City Council wanted McGregor Boulevard to be a non-issue for the residents. Mayor Henderson stated that Summerlin Boulevard and Colonial Boulevard intersection had to be addressed. Mayor Henderson stated that the northbound traffic from the beaches should have the opportunity to turn left to Cape Coral at College Parkway and there would be no opportunity at the intersection at McGregor Boulevard and Colonial Boulevard.

Councilwoman Brown left the meeting at 5:17 o'clock p.m.

Mayor Henderson stated that caution should be utilized when interrupting businesses.

Councilwoman Brown returned to the meeting at 5:18 o'clock p.m.

Mr. DeBerry stated that the Project Development and Environment Study for the Colonial Boulevard Overpass and Widening Project contained a variety of information that was available and input could be provided at any time during the project. Mr. DeBerry stated that a cultural resource assessment, traffic analysis, and environmental analysis which addressed noise and air quality were contained in the Project Development and Environment Study. Mr. DeBerry stated that the historic aspects in the rights-of-way were considered. Mr. DeBerry stated that comments could be submitted for any historical items at McGregor Boulevard that were not addressed by the Project Development and Environmental Study and they would be reviewed. Mayor Henderson stated that the factual details and data demonstrating the

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need for the Colonial Boulevard Overpass and Widening Project should be prepared for the residents of the City to obtain a better understanding. Mr. DeBerry stated that the traffic analysis would be posted on the Lee County website. Mr. DeBerry stated that the travel time from McGregor Boulevard to Interstate 75 would be 60 minutes in twenty years without the Colonial Boulevard Overpass and Widening Project. No action was taken.

**NEWS-PRESS ARTICLE ON FEBRUARY 26, 2010 REGARDING THE POLICE DEPARTMENT** Mayor Henderson stated that an article appeared in The News-Press on February 26, 2010, regarding the budget for the Police Department. Mayor Henderson stated that the task before City Council was to prioritize any budget cuts. Mayor Henderson stated that articles in the News-Press should not be considered as fact. Mayor Henderson stated that the budget changes would not be determined by the media print but would be determined by City Council. Mayor Henderson stated that conclusions should not be drawn based on the remarks in the News-Press. Mayor Henderson stated that City Council would make decisions that were contemplated, direct, and decisive. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Mayor Henderson stated that there would be no assignment of time from one speaker to another. Otto Parisho, resident, Ward 1, stated that the City had an adequate number of police officers and cuts would result in the Police Department being undermanned. Mr. Parisho stated that there was sufficient money that could be cut without affecting safety. Mayor Henderson stated that conclusions drawn from an article in the News-Press was not a useful process. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Kevin Boyd, Post Commander, American Legion Post No. 38, 1857 Jackson Street, stated that there had been a positive change in Police Department presence. Mr. Boyd stated that cutting police officers would send the wrong message to criminal element in the community. Mr. Boyd stated that cutting the police force would affect children. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Fidel Balan, resident, stated that the strides by Doug Baker, Chief, Police Department, to bring communities together with new programs, new ways of doing things, and reducing crime should be commended. Mr. Balan stated that the police force should be not reduced by 47 police officers. Mr. Balan stated that comments made by City officials indicated that the Police Department was 35 percent of the total budget. Mr. Balan stated that the budget of all cities was dominated by public safety. Mr. Balan stated that public safety was the most important thing in the community. Mr. Balan stated that the layoffs would result in a crime ridden community. Mr. Balan stated that the people hurt the most by police officer layoffs would be in lower economic parts of the City and most vulnerable. Mr. Balan stated that lack of proper manpower would result in the Police Department unable to its job. Mr. Balan stated that Chief Baker would be required to take specialized units and put them on patrol. Mr. Balan stated that special people were needed to investigate a homicide. Mr. Balan stated that taxes should be raised or land sold to ensure public safety. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE**

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**NEWS-PRESS FEBRUARY 26, 2010** Gary McCabe, resident, stated that the tax dollars were for public safety and public works which was the foundation of any city. Mr. McCabe stated that decreasing the basics created a spiral effect. Mr. McCabe stated that cutting employees at the Police Department sent the wrong message to the community. Mr. McCabe stated that assessments should be considered to fund the budget. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Shawn Walker, resident, stated that the City could not afford a reduction in salaries or layoffs at the Police Department. Mr. Walker stated that residents would not live in the City because of crime. Mr. Waker stated response times for police officer reponse was improving and cutting police officers would increase reponse time. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Bryon J. Gover, representing Hidaway Sports Bar, 1418 Dean Street, stated that the Police Department was doing a good job and was needed. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Marion Redden Sims, resident, stated that the Police Department should have all the resources needed to do an effective job. Ms. Sims stated that the Police Department should be well staffed, police officers should not be working double shifts and unable to maintain efficiency of operation to provide degree of safety needed. Ms. Sims stated that the City had been unable accomplish security in the Dunbar area until Doug Baker, Chief, Police Department was hired. Ms. Sims stated that adequate funding was required to perform the job necessary. Ms. Sims stated that without resources results could not be achieved. Ms. Sims stated that the City Manager supplied the support needed. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Taunya Cola, resident, stated that Doug Baker, Chief, Police Department, implemented programs for the safety of residents and rallies had been held to stop the violence. Ms. Cola stated that the police presence had a bearing on everything. Ms. Cola stated that a reduction in other expenditures should be considered before a reduction in the budget for the Police Department. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEM: NO. 6A DISCUSS POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS FEBRUARY 26, 2010** Ida Kerr, resident, stated that Doug Baker, Chief, Police Department, was removing racial barriers in the community. Ms. Kerr stated that the drug problem in Campbell Acres would increase if the manpower in the Police Department was reduced. Ms. Kerr stated that City Council should maintain the level of police manpower or increase it. No action was taken.

**PUBLIC INPUT - NON-PUBLIC HEARING AGENDA ITEMS: NO. 9 RESOLUTION PROVIDING FOR CONFIDENTIALITY OF RECORDS FOR ECONOMIC DEVELOPMENT PURSUANT TO FLORIDA STATUTE, SECTION 288.075** Gary McCabe, resident, stated that the confidentiality of records resolution would allow a business not good for the community to be unknown until the last minute. Mr. McCabe stated that citizens would not be allowed to have a say or understand what was

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going on and make sure all funds were going to the right areas for the citizens. No action was taken.

### **NO. 6 PUBLIC HEARING: REGARDING SUBSTANTIAL AMENDMENT NO. 3 TO ONE YEAR ACTION PLAN FOR FISCAL YEAR 2008-2009, FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

Pursuant to advertisement in The News Press, issue of February 8, 2010, Affidavit of Publication on file, a public hearing was held at this time on a Substantial Amendment No. 3 to the One Year Action Plan for Fiscal Year 2008-2009, for Community Development Block Grant Program reallocating Neighborhood Stabilization Programing funding and expanding the target area west of Cleveland Avenue to McGregor Boulevard and south to South Street. Mayor Henderson stated that the City had been working in conjunction with the Horizon Council to expand the target area which would result in economic benefit. It was moved by Councilman Leonardo, seconded by Councilman Simms to approve Substantial Amendment No. 3 to the One Year Action Plan for Fiscal Year 2008-2009, for Community Development Block Grant Program reallocating Neighborhood Stabilization Programing funding and expanding the target area. Robert Gardner, Director, Community Development Department, stated that the One Year Action Plan for the Neighborhood Stabilization Program enabled the City to purchase houses with stimulus money, rehabilitate the houses, and sell them to eligible people. Mr. Gardner stated the City was unsure of the cost of acquiring and rehabilitate the houses. Mr. Gardner stated that the ratio had changed since the program began. Mr. Gardner stated the change was to the One Year Action Plan to reflect the changes as received in administering the Neighborhood Stabilization Program. Mr. Gardner stated that it was decided that there were other areas equally eligible in the City for Neighborhood Stabilization Program. Mr. Gardner stated that the areas had to meet program income guidelines and actual conditions of the houses had to be substandard. Mr. Gardner stated that the Neighborhood Stabilization Program fiscal information had to be changed and there was a proposal to expand the Neighborhood Stabilization Program map. William P. Mitchell, City Manager, stated that the main changes were that the funding would be reallocated to rehabilitation for the acquisition and rehabilitation program. Mr. Mitchell stated that the original determination was the cost of acquisition of properties would be higher than the cost of rehabilitation. Mr. Mitchell stated that the opposite had been the case and the rehabilitation was higher than the acquisition of the property. Mr. Mitchell stated that Substantial Amendment No. 3 to the One Year Action Plan for Fiscal Year 2008-2009, for Community Development Block Grant Program would change the budget to reflect the reality and experience. Mr. Mitchell stated that there was no money in the project for home ownership for people with 50 percent or less of the median income. Mr. Mitchell stated that the change would provide 25 percent of the monies for individuals with incomes of less than 50 percent of median income for home ownership. Mr. Mitchell stated that there were funds in the grant to provide assistance with down payments for people with the lower income status. Mr. Mitchell stated that the boundaries of the Neighborhood Stabilization Program would be expanded to include an area west of Cleveland Avenue because homes in that part of the City had been foreclosed and the program would help to acquire, rehabilitate, and resale the property to assist with the preservation of the neighborhood. There being no one present to be heard, it was moved by Councilman Leonardo, seconded by Councilman Simms and unanimously carried to approve Substantial Amendment No. 3 to the One Year Action Plan for Fiscal Year 2008-2009, for Community Development Block Grant Program reallocating Neighborhood Stabilization Programing funding and expanding the target area.

**CONSENT AGENDA** Mayor Henderson stated that the Consent Agenda consisted of items that were considered to be relatively matter of fact.

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Mayor Henderson 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.

**NO. 3 MINUTES** Minutes of the regular meeting held on February 16, 2010, had been delivered to City Council.

**NO. 4 SUBMITTAL OF COMMUNITY ACTION FOR A RENEWED ENVIRONMENT APPLICATION FOR FEDERAL ASSISTANCE SF-424, REQUEST FOR PROPOSALS NO. EPA-OAR-IO-10-04 TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, FOR BILLY CREEK BLUEWAY RESTORATION** The Community Action for a Renewed Environment Application for Federal Assistance SF-424, Request for Proposals No. EPA-OAR-IO-10-04, in the amount of \$100,000.00, to the United States Environmental Protection Agency was for Billy Creek Blueway Restoration, a program to help the community reduce toxic pollution, with no match required. The community created a partnership with the Environmental Protection Agency by utilizing Community Action for a Renewed Environment funds that implemented solutions to reduce the release of pollutants such as carbon monoxide, waste, pesticides, fertilizers, household chemicals and motor vehicle fluids, to create awareness of proper disposal, and minimize exposure. The funds would be used to create partnerships with grass roots organizations in the City, engage the community to understand the environmental issues that may be found, and develop a plan of action to benefit the community of the boundary area. The funding would assist the City to continue to address environmental problems and educate the community.

**NO. 5 ACCEPT GRANT FUNDS AND ESTABLISH BUDGET UTILIZING FUNDS RECEIVED FROM FLORIDA DEPARTMENT OF LAW ENFORCEMENT FOR CONTRACT NO. 2010-PSNM-LEE-1-A1-001, PROJECT SAFE NEIGHBORHOOD – MIDDLE DISTRICT OF FLORIDA** Grant funds, in the amount of \$110,135.00, were received from Florida Department of Law Enforcement with funding provided by the United States Department of Justice, Bureau of Justice Assistance, for Contract No. 2010-PSNM-LEE-1-A1-001, Project Safe Neighborhood – Middle District of Florida, and a budget was established by like amount to fund overtime, equipment, and training for the Police Department project known as Reducing Violent Crimes and Removing Illegal Guns from the Streets of Fort Myers, effective January 1, 2010, through December 31, 2010, with no match required. Funds would be used as follows:

- Overtime to fund officers to work task force operations to track juveniles and young adults involved in violent and/or illegal gun activities.
- Leasing of electronic monitoring system to monitor juveniles arrested on gun charges and other violent crimes.
- Purchase of in-car video systems for the Juvenile Arrest and Monitor patrol vehicles to ensure officer safety and to enhance accountability of the Police Department in the community.
- Travel expenses for 2 personnel to attend the Project Safe Neighborhood National Conference.

The budget was established as follows:

Salaries and Wages - Overtime	\$27,422.00
Federal Insurance Contributions Act Taxes	\$ 2,098.00
Police Retirement Costs	\$10,283.00
Workers Compensation	<u>\$ 1,426.00</u>
Total Personnel Services	\$41,229.00

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Project Safe Neighborhood Conference	\$ 2,000.00
Monthly Leasing of Electronic Monitoring System to track juvenile offenders and Replacement Costs for monitors and anklets	<u>\$50,500.00</u>
Total Operating Costs	\$52,500.00
In-Car Video Systems (3)	<u>\$16,406.00</u>
Total Capital Outlay Costs	\$16,406.00
Total Grant Funding	\$110,135.00

**NO. 5a SUBMITTAL OF ONLINE FEDERAL GRANT APPLICATION NIJ-2010-90047-FL-DN, CFDA 16.560 TO THE NATIONAL INSTITUTE OF JUSTICE**

The online federal grant application NIJ-2010-90047-FL-DN, CFDA 16.560, in the amount of \$349,586.00, was submitted to the National Institute of Justice for the Police Department project known as Solving Cold Cases with Deoxyribonucleic Acid, with no match required. The Police Department would utilize the funding as follows:

- Hire a part-time Crime Analyst to assist detectives in performing statistical and investigative analysis of the cold homicide cases and work to increase the apprehension of suspects and clearance of cases.
- A private accredited Deoxyribonucleic Acid lab to be utilized to analyze biological evidence in the cold homicide cases. The private Deoxyribonucleic Acid lab had the ability to conduct specialized Deoxyribonucleic Acid testing that the State lab did not have.
- Detectives to attend specialized training on cold case investigations and forensics.
- Overtime for detectives actively working cold homicide cases.
- Travel for detectives in the event of travel out of the area to interview witnesses and/or persons of interest.
- Laptop computers for detectives to utilize in the field.
- Purchase Cold Case Playing Cards displaying information regarding the cold cases and utilize electronic billboards for display.

Funds would be used in Fiscal Years 2010-2011 and 2011-2012, with a fiscal impact of \$41,268.00 as retirement costs could not be budgeted in the National Institute of Justice Grant

**MOTION FOR CONSENT AGENDA** It was moved by Councilman Flanders, seconded by Councilman Banks and unanimously carried to approve the Consent Agenda. The same were approved as written and the various officials were hereby authorized and directed to take such action as may be necessary to give effect to the recommendations.

**NO. 6a DISCUSSION OF POLICE DEPARTMENT LAYOFFS AS REPORTED IN THE NEWS-PRESS**

Grant W. Alley, City Attorney, left the meeting at 6:07 o'clock p.m.

Councilman Leonardo stated that after reading the article in The News-Press article that 47 police officer would be laid off as a result of budget reductions an electronic message was sent at 7:49 o'clock a.m. to Terry Eberle, Vice President/Executive, The News-Press, indicating that City Council would not allow the Police Department to be decimated. Councilman Leonardo stated that the message was to be published as a guest opinion to reassure the citizens. Councilman Leonardo stated that an electronic message with three questions regarding the newspaper

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article was sent to William P. Mitchell, City Manager, at 9:15 o'clock a.m.

Grant W. Alley, City Attorney, returned to the meeting at 6:08 o'clock p.m.

Councilman Leonardo stated that the City Manager provided an answer to City Council to the questions. Councilman Leonardo stated that an electronic message was sent to Marie Adams, MMC, City Clerk, at 9:25 o'clock a.m. requesting the same three questions regarding the Police Department be placed on the agenda. Councilman Leonardo stated that the City Clerk forwarded the request to Margaret Feinberg, Senior Staff Assistant, City Clerk's Office, to prepare a the item for placement on the agenda. Councilman Leonardo stated that shortly thereafter a telephone call was received from Mr. Mitchell indicating that the letter to Terry Eberle and the request for the item to be placed on the agenda would undermine negotiations with the Florida Police Benevolent Association, Inc., Gulf Coast Chapter and passionately pleaded not to place the matter on the agenda. Councilman Leonardo stated that he declined to agree with Mr. Mitchell and told him that he would discuss it with him later in the day, which did not happen. Councilman Leonardo stated that Ms. Fineberg was advised by Nancy Heberle, Deputy City Clerk, at 9:50 o'clock a.m. that Mr. Mitchell would not allow the item to be added to the agenda. Councilman Leonardo stated that Mr. Mitchell indicated in a telephone call that the letter to Terry Eberle would undermine the negotiation with the Florida Police Benevolent Association, Inc., Gulf Coast Chapter and requested that the item not be placed on the agenda. Councilman Leonardo stated that the article quoted Doug Baker, Police Chief, that because of the severe budget cut the Police Department would not have any school resource officers, community policing, juvenile arrests and monitoring unit, bicycle patrol, the narcotics operations would be reduced by fifty percent, and the only thing that would be done was calls for service. Councilman Leonardo stated that he advised the City Manager that City Council would not allow the Police Department to be decimated. Councilman Leonardo stated that he did not want to tell the City Manager how to deal with the unions. Councilman Leonardo stated that dealing in good faith with the unions required a position of what was real and that was City Council was not going to cut 47 police officers from the budget. Councilman Leonardo stated that negotiations should be done in good faith with what was possible and not threaten. Councilman Leonardo stated that the public was threatened and his actions were proactive. Councilman Leonardo stated that the issued involved the City Manager not wanting the item on the agenda because he did not think the content was appropriate. Councilman Leonardo stated that the City Manager did not decide what went on the City Council agenda. Councilman Leonardo stated that when he wanted something on City Council agenda it would be placed on the agenda. Councilman Leonardo stated that at the end of the day on Friday, the City Manager notified him that the discussion of Police Department layoffs would be placed on the agenda and the discussion with the City Manager was amicable. Councilman Leonardo stated that there should be a decision on if it was appropriate for the City Manager to censure what City Council wanted to place on the agenda. Councilman Flanders stated that City Council had the right to put items on the agenda that followed the parameters. Councilman Flanders stated that Legal Department had historical data on City Council placing an item on the agenda. Councilman Flanders stated that the Fiscal Year 2010-2011 budget year would be worse than Fiscal Year 2009-2010. Councilman Flanders stated that when revenues are not available and budgets had to be cut the biggest fear of City employees was that upper level management would come to the department and mandate the amount and way the budget was decreased. Councilman Flanders stated that the employees were afraid there would not be a lot of input on how best to run the department if there was a substantial budget cut. Councilman Flanders stated that

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City Council would not eliminate 47 police officers. Councilman Flanders stated that presenting the elimination to 47 police officers to the Police Department was the incorrect way to manage the budget. Councilman Flanders stated that the issue was out of hand and everyone needed to work together. William P. Mitchell, City Manager, stated that the department directors were requested to give an assessment and analysis of how the department could best operate in the event of reduced resources. Mr. Mitchell stated that there was a difference between working with the department directors and working with the unions. Mr. Mitchell stated that the City was involved in the negotiation of a new contract with the Florida Police Benevolent Association, Inc., Gulf Coast Chapter. Mr. Mitchell stated that the objective was to obtain a significant reduction in benefit and salary costs of police employees. Mr. Mitchell stated that the net impact of the reduction in benefit and salary costs would be to limit or moderate the required increases in taxes, to continue support the services levels in the City, limit the reductions necessary in services, and any layoffs associated with reductions in services. Mr. Mitchell stated that the only other means City Council had to reduce the deficit would be to raise revenues. Mr. Mitchell stated that to limit the requirement of increases in revenues and limit and minimize the increases in taxes and fees, the City was attempting to reduce costs. Mr. Mitchell stated that costs could not be reduced without telling people who have control over the costs what the City wanted and needed. Mr. Mitchell stated that people had to talk in negotiations. Mr. Mitchell stated that no one proposed eliminating 47 jobs. Mr. Mitchell stated that the request was for information. Mr. Mitchell stated that the unions wanted to know what the required amount of money would translate into in jobs. Mr. Mitchell stated that the City would provide the information when requested. Mr. Mitchell stated that the City did not indicate that the jobs would be eliminated. Mr. Mitchell stated that City Council had a workshop on the preliminary budget on February 8, 2010. Mr. Mitchell stated that City Council was advised the Budget Office would be developing service packages for every department with corresponding staffing and resources. Mr. Mitchell stated that the service packages would be prioritized and presented to City Council to make a decision of which service packages were the highest priority. Mr. Mitchell stated that City Council was several months away from making the judgments and decisions on service packages. Mr. Mitchell stated that City Council would have the information and would make the decision on which service package to prioritize. Mr. Mitchell stated that the employees assembling the service packages were the department directors and Budget Office. Mr. Mitchell stated that the Budget Office was working with the department directors to identify all the services provided by the department and tying resources to the services. Mr. Mitchell stated that the department directors were identifying core services. Mr. Mitchell stated that City Council indicated in a strategic planning workshop that they wanted to know the core services. Mr. Mitchell stated that the Police Department had core services. Mr. Mitchell stated that not all the services in the Police Department were considered to be core services by Doug Baker, Police Chief. Mr. Mitchell stated that some services were basic and fundamental for the delivery of police services than other services. Mr. Mitchell stated that the same applied to the Public Works Department and Community Development Department. Councilman Flanders stated that facilities would be closed that were not as necessary as the Police Department before reducing their budget 35 percent. Mr. Mitchell stated that was the position of the City Manager, however, the City was in negotiations that included things that were unexpected. Mr. Mitchell stated that everything said negotiations could not be prescribed. Mr. Mitchell stated that there were things said in negotiations that were unanticipated and unexpected. Mr. Mitchell stated that the press and media reported things as they saw them. Mr. Mitchell stated that there was no way that because any department made up a certain percentage of the budget that they would necessarily have to incur that

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corresponding percentage of loss. Mr. Mitchell stated that the City was talking to employees about what they could do to help reduce the deficit. Mr. Mitchell stated that employees had control and could contribute something and they should contribute something. Mr. Mitchell stated that the tax payer would be asked to contribute by paying increased taxes or accepting fewer services. Mr. Mitchell stated that the employees of the City had to know what they could give. Mr. Mitchell stated that the contribution was within the control of the employee. Mr. Mitchell stated that the employee could receive fewer benefits and a lower salary. Mr. Mitchell stated that it was an opportunity and a necessity for the salaries and benefits to be reset to reflect the economy. Mr. Mitchell stated that the benefits and salaries were based on a robust economy when the City had 30 percent more property value and people were anticipating a continual growth curve. Mr. Mitchell stated that things have not continued to grow but the City and economy had experienced a decline. Mr. Mitchell stated that there had not been a decline in property values since World War II. Councilman Streets stated that it was not the time for Council to negotiate or subject the City from doing its job by injecting itself into negotiations by saying what would and would not be done. Grant W. Alley, City Attorney, stated that the chief administrative officer was the City Manager. Attorney Alley stated that the City had a negotiating team for conducting negotiations and there were rules to follow during the process. Attorney Alley stated that the negotiations were held in the Sunshine and both parties had to act in good faith in negotiations. Attorney Alley stated that the City had not negotiated in bad faith with the Police Department. Councilman Streets stated that the City Manager should be allowed to negotiate until something was presented to City Council. Councilman Streets stated that statements were made which may not have been taken into proper perspective. Councilman Streets stated that the statements had created unnecessary fear. Councilman Streets stated that City Council should not negotiate with the unions in the media. Attorney Alley stated that City Council should not negotiate with the unions during a City Council meeting. Attorney Alley stated that the process provided for the City Manager to negotiate with the unions. Attorney Alley stated that the leadership of the unions should negotiate with the City. Attorney Alley stated that the negotiations were a well established process and City Council should not be negotiating the union contracts. Councilman Leonardo stated that that it was erroneous to think that by making a proactive statement he was negotiating with the unions. Councilman Leonardo stated that he was one member with one vote and was entitled to his opinion. Councilman Leonardo stated that the City Council was careful to review expenditures for public safety and would not let the Police Department to be decimated. Councilman Leonardo stated that there was no way 47 people would be cut from the Police Department. Councilman Banks stated that eliminating the budgets for the Imaginarium Hand-On Museum and Aquarium, Harborside Event Center, S.T.A.R.S. Program, South Florida Museum of History, Skatium, and Historic homes would save \$3,000,000.00. Councilman Banks stated that the programs would be cut and the City still needed \$13,000,000.00. Councilman Banks stated that it was unknown how many positions would be eliminated. Councilman Banks stated that discussions by City Council during negotiations were wrong. Councilman Banks stated that the City had to balance the budget. Councilman Banks stated that Ward 5 residents were advocating no tax increases. Councilman Banks stated that a decision would not be made until the budget was presented. Councilwoman Brown stated that it would be a difficult budget year. Councilwoman Brown stated that City Council had to work together to balance the budget. Councilwoman Brown stated that taxes may have to be raised. Councilwoman Brown stated that an intelligent decision could not be made until the budget was presented. Councilwoman Brown stated that everyone needed to work with City Council as it tried to resolve the issues. Councilman Brown stated that the Police Department and Fire Department were appreciated but everyone needed to be

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realistic. Councilwoman Brown stated that City Council understood what the core services were and were willing to do what was best for the City. Councilman Streets stated that issue was about City Council becoming involved before the process had time to work. Councilman Streets stated that the process began with the City Manager. Councilman Streets stated that the City Council should not speak to the media during negotiations before talking to the City Manager. Councilman Streets stated that there was not an opportunity to edit or determine what would be printed when talking to the media. Councilman Streets stated that City Council has not had to face the magnitude of the economic times before. Councilman Simms stated that people should not panic because City Council was not at the point of adopting a budget. Mayor Henderson stated that the City Manager should execute the process with extreme vigilance in the way of empathy, sympathy, and enlisting the aid of the senior leadership to understand what was required. Mayor Henderson stated that City Council did not like 100 percent of the options presented to reduce costs. Mayor Henderson stated that the City Council had to determine which things were the least punitive. Mayor Henderson stated that City Council should meet, discuss professionally, and keep emotions to a minimal. Mayor Henderson stated that City Council should resolve to listen and agree with the recommended process and make a decision when the information has been provided. Mayor Henderson stated that the decision should be information driven. No action was taken.

### **MOTION TO SUSPEND RULES OF PROCEDURE AND ALLOW WALK ON ITEM: INCLUDE PUBLIC COMMENT ON NON-AGENDA ITEMS AS PART OF THE LIVE TELEVISION BROADCAST OF CITY COUNCIL MEETINGS**

It was moved by Councilman Flanders, seconded by Councilman Leonardo and unanimously carried to allow a walk on item to direct the City Manager to include public comment on non-agenda items as part of live television broadcast of City Council meetings.

### **WALK ON ITEM NO. 6b INCLUDE PUBLIC COMMENT ON NON-AGENDA ITEMS AS PART OF LIVE TELEVISION BROADCAST OF CITY COUNCIL MEETINGS**

Councilman Leonardo stated that when a person spoke on non-agenda items at the end of the City Council meeting it was not telecast. Councilman Leonardo stated that there was a particular contentious issue involving speakers on non-agenda items but any action should be rescinded that kept things out of the public realm. It was moved by Councilman Leonardo, seconded by Councilman Flanders to direct the City Manager to include all public comment on non-agenda items as part of live television broadcast of City Council meetings. Mayor Henderson stated that the public input of non-agenda items was being utilized as a political platform. Councilman Streets stated that the City Attorney and City Manager should review the issue and present the results at the March 15, 2010, meeting. It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried to amend the motion to allow the City Manager and City Attorney to review the issue and present it at the March 15, 2010, meeting.

### **NO. 7 PERMISSION TO ADVERTISE FOR PUBLIC HEARING: TRANSMITTAL OF TEXT AMENDMENT 09-TA-01 TO THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND OTHER REQUIRED AGENCIES FOR REVIEW AND SUBSEQUENT OBJECTIONS, RECOMMENDATIONS, AND COMMENTS REPORT AS REQUESTED BY CHEAP RENT, LLC, APPLICANT**

Mayor Henderson stated that Cheap Rent, LLC, applicant requested Text Amendment 09-TA-01 to the Future Land Use Element of the Comprehensive Plan be transmitted to the Florida Department of Community Affairs and other required agencies for review and subsequent objects, recommendations, and comments report, allowing existing Light Industrial uses, formerly Light Industrial I-1, to

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remain on the property located at 1828 Evans Avenue and adjacent properties. It was moved by Councilman Flanders, seconded by Councilman Streets and unanimously carried to advertise for a transmittal public hearing for Text Amendment 09-TA-01 to the Future Land Use Element of the Comprehensive Plan to Florida Department of Community Affairs and other required agencies for review and subsequent objects, recommendations, and comments report, allowing existing Light Industrial uses, formerly Light Industrial I-1, to remain on the property located at 1828 Evans Avenue and adjacent properties.

**NO. 8 PERMISSION TO ADVERTISE FOR PUBLIC HEARING: TRANSMITTAL OF TEXT AMENDMENT 09-TA-06 TO THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN AND 2020 FUTURE LAND USE MAP AMENDMENT 09-MA-07 TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND OTHER REQUIRED AGENCIES FOR REVIEW AND SUBSEQUENT OBJECTIONS, RECOMMENDATIONS, AND COMMENTS REPORT** Mayor Henderson stated that transmittal public hearing required advertising for the Transmittal of Text Amendment 09-TA-06 to the Future Land Use Element of the Comprehensive Plan and 2020 Future Land Use Map Amendment 09-MA-07 to Florida Department of Community Affairs and other required agencies for review and subsequent Objections, Recommendations, and Comments Report, amending future land use classifications. It was moved by Councilman Streets, seconded by Councilman Flanders to advertise for a transmittal public hearing. Councilman Leonardo stated that the City should transmit Text Amendment 09-TA-06 to the Future Land Use Element of the Comprehensive Plan and 2020 Future Land Use Map Amendment 09-MA-07 to Florida Department of Community Affairs for approval before it became a referendum item further limiting home rule. It was moved by Councilman Streets, seconded by Councilman Flanders and unanimously carried to advertise for a transmittal public hearing for Text Amendment 09-TA-06 to the Future Land Use Element of the Comprehensive Plan and 2020 Future Land Use Map Amendment 09-MA-07 to Florida Department of Community Affairs and other required agencies for review and subsequent Objections, Recommendations, and Comments Report, amending future land use classifications.

**NO. 9 RESOLUTION NO. 2010-5 PROVIDING FOR CONFIDENTIALITY OF RECORDS FOR ECONOMIC DEVELOPMENT PURSUANT TO FLORIDA STATUTE, SECTION 288.075** Mayor Henderson introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

### RESOLUTION NO. 2010-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, PROVIDING FOR CONFIDENTIALITY OF RECORDS FOR ECONOMIC DEVELOPMENT AND PROVIDING FOR AN EFFECTIVE DATE.

William P. Mitchell, City Manager, stated that the resolution provided for confidentiality of records for economic development pursuant to Florida Statute Section 288.075. Mr. Mitchell stated that the City was working with the Office of Economic Development for Lee County to attract companies to the City and increase employment availability. Mr. Mitchell stated that the Office of Economic Development for Lee County emphasized that to be an effective partner there had to be the right to keep the information confidential that the Office of Economic Development for Lee County shared with the City. Mr. Mitchell stated that companies considering relocating requested confidentiality because they were operating in a competitive environment. Mr. Mitchell stated

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that there were corporate concerns and interests such as resources and employees to be considered. Mr. Mitchell stated that companies did not want information released prematurely that would bring the efforts of relocation to a stop. Grant W. Alley, City Attorney, stated that the confidentiality was governed by Florida Statute and it was not a policy decision favoring confidentiality being made by City Council. Attorney Alley stated that confidentiality was determined by Florida Legislature and adopted a Florida Statute. Attorney Alley stated that the mandate pursuant to Florida Statute 288.075(2)(a) was as follows:

(2) PLANS, INTENTIONS, AND INTERESTS.

(a) Upon written request from a private corporation, partnership, or person, information held by an economic development agency concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed . . .

(c) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information under this subsection until 90 days after the information is made public unless:

1. The public officer or employee is acting in an official capacity;
2. The agreement does not accrue to the personal benefit of such public officer or employee; and
3. In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project . . .

Attorney Alley stated that Florida Statute identified trade secrets, proprietary confidential business information, identification of account, and registration numbers. Attorney Alley stated that additional authority was not granted to any group but created the ability for the City to take advantage of what was created by the Florida Legislature. Attorney Alley stated that a policy decision was made that the City needed to encourage and promote economic development. Attorney Alley stated that the market demanded that the City, a public entity, have the ability to keep negotiations confidential for a period of time so corporations could do due diligence. Attorney Alley stated that the City was not required to have an economic development agency or take advantage of what the market demanded. Attorney Alley stated that the resolution was an encouragement for the City to acknowledge what the State had established as law. Mr. Mitchell stated that the City Council would know who was designated among City employees to have confidentiality. Mr. Mitchell stated that the employees providing economic development services and perform the function of economic were being identified to City Council. Mr. Mitchell stated that it was formally established that the employee shared the right to confidentiality when the public or media requested information. Mr. Mitchell stated that the assurance that the City would keep confidential information shared was required by the Office of Economic Development for Lee County. Mr. Mitchell stated that the Office of Economic Development for Lee County employees maintained the confidentiality otherwise the office could not function as an economic development agency. Mr. Mitchell stated that City Council would establish employees as the economic development agency in effect. Mr. Mitchell stated that the City was not organizing an economic development agency because of lack of funding and existing employees were being utilized by identifying the employees who would perform the

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economic development function. Mr. Mitchell stated that the City employees performing the economic development function would bring all proposals being seriously presented after companies had made the decision to commit to Fort Myers would be brought to City Council. Mr. Mitchell stated that City Council would approve the agreements with the developers or companies. Mr. Mitchell stated that there were areas zoned industrial that was under utilized. Mr. Mitchell stated that the City would identify the under utilized areas to the Office of Economic Development for Lee County and make the areas a top priority for development. Mr. Mitchell stated that the City Council would authorize priority areas for economic development in the City for promotion to attract new business, firms, and jobs. Mr. Mitchell stated that the resolution would allow the City to be assertive and aggressive in highlighting the features of the City that were attractive to businesses. Mr. Mitchell stated that the Office of Economic Development for Lee County would be told the areas to promote for new business and empower the economic development efforts in the City.

Councilman Leonardo left the meeting at 7:15 o'clock p.m.

Councilman Banks stated that the Community Redevelopment Agency had different entities interested in the City that were unknown to City Council.

Councilman Leonardo returned to the meeting at 7:17 o'clock p.m.

Mr. Mitchell stated that the Community Redevelopment Agency could not operate outside the confines of the boundary of the Community Redevelopment Areas as established by the City. Mr. Mitchell stated that the Florida Statute extending confidentiality to employees engaged in the economic development functions did not extend to any employees of a community redevelopment agency in the State.

Councilwoman Brown left the meeting at 7:18 o'clock p.m.

Attorney Alley stated that the City made an effort to include the Community Redevelopment Agency while meeting the statutory requirements. Attorney Alley stated that the Attorney General opined that the confidentiality did not apply to community redevelopment agencies. Attorney Alley stated that City Council could adopt the resolution providing the Community Redevelopment Agency employees would provide assistance identified by the City Manager to assist employees of the City to perform economic development duties if related to a community redevelopment area. Attorney Alley stated that City Council can adopt the resolution and present it to the Community Redevelopment Agency Board of Commissioners but it was not legally required. Councilman Flanders stated that the resolution gave City Council the power to utilize Community Redevelopment Agency employees to help with economic development.

Councilwoman Brown returned to the meeting at 7:20 o'clock p.m.

Attorney Alley stated that the Community Redevelopment Agency positions would assist the economic development program through the existing Interlocal Agreement between the City and the Community Redevelopment Agency for the provision of the services. Attorney Alley stated that the Community Redevelopment Agency services would be limited to redevelopment areas within the Community Redevelopment Agency jurisdiction. Attorney Alley stated that the Community Redevelopment Agency could not be added to the list of authorized individuals because the attorney general opined that because of limited government of community redevelopment agencies the confidentiality provision was not be afforded to them. Attorney Alley stated that the resolution complied with the existing Interlocal Agreement. Attorney

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Alley stated that the resolution could be reviewed if a problem arose or the Community Redevelopment Agency wanted review. Attorney Alley stated that the Attorney General opined that an employee of a community redevelopment agency was not afforded the economic development confidentiality benefit. Attorney Alley stated that the Attorney General opinion had not been overturned by the new Attorney General. Attorney Alley stated that the opinion was a non-binding interpretation that gave guidance whether the Attorney General believed the statute applied to the community redevelopment agencies. Mr. Mitchell stated that the Community Redevelopment Agency positions would assist the economic development program through the existing Interlocal Agreement between the City and the Community Redevelopment Agency for the provision of services. Mr. Mitchell stated that direct Community Redevelopment Agency services would be limited to redevelopment areas and were not provided the benefits of confidentiality pursuant to Florida Statute, existing case law, and Attorney General opinion. Attorney Alley stated that an economic development agency provided by Florida Statute did not give anyone the authority to adopt an agreement that was inconsistent with the zoning or take authority away from City Council to review and approve planned unit developments or developments that would otherwise come before City Council. Attorney Alley stated that the resolution did not prevent an item being presented to the Board of Adjustments if a conditional use or variance request was required. Attorney Alley stated that the item would appear before the Planning Board if required. Attorney Alley stated that the resolution did not circumvent any Charter authority that existed within one branch of government versus another. Attorney Alley stated that the resolution afforded a Florida Statute, Chapter 119 exemption provided for by the State Legislature. Gary McCabe, resident, stated that a company would be allowed to research an area privately before publicly announcing they would relocate to the area. Don Paight, Executive Director, Fort Myers Redevelopment Agency, stated that there were benefits to taking advantage of Florida Statute 288.075. Mr. Paight stated that there were companies wanting to investigate possibly relocating to the City and did not want their competitors to know. Mr. Paight stated that companies did not want to deal with a jurisdiction that allowed a public records request to reveal the information. Mr. Paight stated that the Office of Economic Development for Lee County could work within the City with the economic development personnel to gather the information needed for the company. Mr. Paight stated that a company interested in downtown, Dr. Martin Luther King Jr. Boulevard, Palm Beach Boulevard, Cleveland Avenue or one of the community redevelopment areas, the resolution allowed the Community Redevelopment Agency to provide information through the City economic development employees on programs that might be beneficial to attract the business. Mr. Paight stated that the Community Redevelopment Agency was exempt from Florida Statute 288.075 but could work through the City. Mr. Paight stated that the Community Redevelopment Agency would have the opportunity to provide information on incentives, programs, available lands, and buildings that would potentially give the option to the business. Mr. Paight stated that the Community Redevelopment Agency would not be given the name of the company or specifics and could provide information. It was moved by Councilman Streets, seconded by Councilman Leonardo and carried to adopt the resolution. Councilman Flanders voted no. The resolution was adopted at 7:31 o'clock p.m.

**NO. 10 RESOLUTION NO. 2010-6 RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM AUTHORIZING AMENDMENT 1 TO CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT NO. WW667140 WITH THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FOR PHASE I K-1B DOWNTOWN UTILITY IMPROVEMENT PROJECT** Mayor Henderson introduced and

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caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2010-6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM AUTHORIZING LOAN AMENDMENT 1, IN THE AMOUNT OF \$7,495,000.00, TO LOAN AGREEMENT NO. WW667140 FOR PHASE I K-1B, DOWNTOWN UTILITY IMPROVEMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE.

William P. Mitchell, City Manager, stated that the resolution relating to the State Revolving Fund Loan Program authorizing Amendment 1, in the amount of \$7,495,000.00 excluding Capitalized Interest, to Clean Water State Revolving Fund Loan Agreement No. WW667140 with the State of Florida Department of Environmental Protection was for construction and technical services for Phase I K-1B Downtown Utility Improvement Project, for a total project amount of \$15,551,000.00 plus Capitalized Interest in the amount of \$194,779.00. Mr. Mitchell stated that the City utilized the State Resolving Fund Loan Program to fund utility improvements. Mr. Mitchell stated that the City received the loan proceeds as they become available to the State. Mr. Mitchell stated that the City was reimbursed for the money advanced to fund the cost of the improvements. Mr. Mitchell stated that the resolution was for a reimbursement of a portion of funds expended in advance. It was moved by Councilman Banks, seconded by Councilman Streets to adopt the resolution. Saeed Kazemi, Director, Public Works Department, stated that the Clean Water State Revolving Fund Loan was not the same fund utilized by Lee County Department of Transportation for the Project Development and Environment Study of the Colonial Boulevard Overpass and Widening Project. Mr. Kazemi stated that the Clean Water State Revolving Fund Loan was for utility and stormwater, not transportation. It was moved by Councilman Banks, seconded by Councilman Streets and unanimously carried to adopt the resolution. The resolution was adopted at 7:35 o'clock p.m.

**NO. 11 RESOLUTION NO. 2010-7 RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM AUTHORIZING AMENDMENT 5, TO CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT NO. WW66710P WITH THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FOR CONSTRUCTION AND TECHNICAL SERVICES FOR PHASE IV AREA A AND AREA C UTILITY IMPROVEMENT PROJECT; AND PHASE I DOWNTOWN UTILITY AND STREETScape IMPROVEMENT PROJECT** Mayor Henderson introduced and caused to be read by Grant W. Alley, City Attorney, by its title, a resolution as hereinafter set out entitled:

RESOLUTION NO. 2010-7

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, RELATING TO THE STATE REVOLVING FUND LOAN PROGRAM AUTHORIZING LOAN AMENDMENT 5, IN THE AMOUNT OF \$2,505,000.00, FOR PHASE IV AREA A, UTILITY IMPROVEMENT PROJECT; PHASE IV AREA C, UTILITY IMPROVEMENT PROJECT; AND PHASE I DOWNTOWN UTILITY AND STREETScape IMPROVEMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE.

William P. Mitchell stated that the resolution relating to the State Revolving Fund Loan Program authorizing Amendment 5, in the amount of \$2,505,000.00 excluding Capitalized Interest, to Clean Water State

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Revolving Fund Loan Agreement No. WW66710P with the State of Florida Department of Environmental Protection was for construction and technical services for Phase IV Area A and Area C Utility Improvement Project; and Phase I Downtown Utility and Streetscape Improvement Project for a total project amount of \$40,469,848.00 plus Capitalized Interest in the amount of \$1,180,133.00. It was moved by Councilman Flanders, seconded by Councilman Leonardo and unanimously carried to adopt the resolution. The resolution was adopted at 7:36 o'clock p.m.

### **NO. 12 CHANGE ORDER NO. 1 TO STATE ROAD 82 FROM EAST OF ORTIZ AVENUE TO SOUTH OF LEE BOULEVARD, CONTRACT NO. 66-08-09, WITH MITCHELL & STARK CONSTRUCTION COMPANY**

William P. Mitchell, City Manager, stated that Change Order No. 1, in the amount of \$824,116.00, to State Road 82 from east of Ortiz Avenue to south of Lee Boulevard, Contract No. 66-08-09, with Mitchell & Stark Construction Company increasing the contract amount from \$21,225,139.09 to \$22,049,255.09 was for testing and sampling of all Florida Department of Transportation roadway construction and establish contingency amounts. Mr. Mitchell stated that the State required the testing be added to the contract. Saeed Kazemi, Director, Public Works Department, stated that Universal Engineering Sciences was a local soil testing company. Mr. Kazemi stated that Universal Engineering Sciences was the lowest bidder at \$424,116.00. Mr. Kazemi stated that the City added \$150,000.00 for contingency for the road for the State. Mr. Kazemi stated that the utility work was underway and \$150,000.00 was added for the City portion of the project. Mr. Kazemi stated that the future signal needs at The Forum to the north and Hanson Street pursuant to the development agreements were included in the change order. It was moved by Councilman Leonardo, seconded by Councilman Streets and unanimously carried to approve Change Order No. 1, in the amount of \$824,116.00, to State Road 82 from east of Ortiz Avenue to south of Lee Boulevard, Contract No. 66-08-09, with Mitchell & Stark Construction Company, increasing the contract amount from \$21,225,139.09 to \$22,049,255.09 for testing and sampling of all Florida Department of Transportation roadway construction and establish contingency amounts.

There being no further business to come before the meeting, it was moved by Councilman Flanders, seconded by Councilman Leonardo and unanimously carried to adjourn at 8:11 o'clock p.m.

ATTEST:

Marie Adams, MMC  
City Clerk