

MAY 24, 2011

The Regular Meeting of the Board of Lee County Commissioners was held on this date with the following Commissioners present:

- Frank B. Mann, Chairman
- John Manning, Vice Chairman
- Tammara Hall
- A. Brian Bigelow

COMMISSIONER JUDAH WAS ABSENT FOR THE ENTIRE MEETING.

The Chairman called the meeting to order at 9:32 a.m., and requested a moment of silence for Parks and Recreation Maintenance Specialist Pete Schroat who recently passed away. The Invocation was given by Pastor Peter Covo, Life Church, followed by the Pledge of Allegiance to the Flag.

**ANNOUNCEMENTS**

Referring to the Revised Agenda Recap Sheet dated May 24, 2011, the Chairman announced that:

Consent Agenda Item 3(a) should be deferred to May 31, 2011, to allow for additional review.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

Walk on Item No. 1 should be omitted from the agenda.

Three (3) Walk on Items and One (1) Carry-over Item would be taken at the appropriate time.

**9:30 A.M. AGENDA ITEM** - Public Comment on Agenda Items  
Consent (C) and Administrative (A)

The Chairman called for public comment, and the following citizen came forward:

WO 4 – St. James City resident Phil Buchanan

The following are the Consent Agenda items that each Board member wished to have discussed:

- Commissioner Mann - None
- Commissioner Manning - None
- Commissioner Hall - None
- Commissioner Bigelow – 1(a), 7(a), 13(b)

**CONSENT AGENDA**

**1. COUNTY ADMINISTRATION**

**A) ACTION REQUESTED/PURPOSE:**

Approval of Gartner, Inc. FIRST Incentive Program award of \$1,000,000.00 and Performance Agreement. The project consists of a regional multinational business enterprise. Also, approve transfer from General Fund reserves for \$1,000,000.00 to have budget available for payments. (#20110361-ECONOMIC DEVELOPMENT)

**FUNDING SOURCE:**

General Fund – Economic Development Opportunities.

**WHAT ACTION ACCOMPLISHES:**

Furtheres the goal of diversifying Lee County’s economy through the creation of high-paying, target industry based employment.

**MANAGEMENT RECOMMENDATION:**

Approve.

**PULLED FOR DISCUSSION**

Following Economic Development Director Jim Moore’s response to questions by Commissioner Bigelow on the funds and jobs created, Commissioner Bigelow moved the item, seconded by Commissioner Hall. During brief

comments, Mr. Moore agreed to post the progress of the project on the website. The motion was called and carried with Commissioner Judah absent.

## 2. COMMUNITY DEVELOPMENT

No requests received.

## 3. CONSTRUCTION AND DESIGN

### A) ACTION REQUESTED/PURPOSE:

A. Approve [Addendum to the Construction Manager Agreement](#) under RFQ-05-08 Justice Center Renovations, to Target Builders, Inc. (a local Contractor), for the project known as Renovations of the Justice Center Pods B, C, D and the Lobby Area of the First Floor, for a Guaranteed Maximum Price of \$5,674,934.00 (includes CM Fee of \$281,679.00), utilizing 99% local sub-contractors, with a substantial completion time of 434 calendar days and final completion within 464 calendar days.

B. Also, request that the Board approve waiving of the formal process (if needed), and authorize the use of the Direct Material Purchase Orders as provided for in the CM agreement with Lee County, which allows the County to purchase directly from suppliers of equipment and/or materials as a cost/time saving measure.

C. Further authorize Chair to execute the CM Addendum upon receipt.

(#20110330-CONSTRUCTION AND DESIGN)

### FUNDING SOURCE:

Fund: General Fund; Program –Major Maintenance; Project – Justice Center Renovations Pods B, C, D & Lobby First FL).

### WHAT ACTION ACCOMPLISHES:

Provides Lee County with a Construction Manager to provide all labor and materials for the renovations of the Lee County Justice Center Annex Pods B, C, D and the Lobby Area of the First Floor.

### MANAGEMENT RECOMMENDATION:

Approve.

DURING THE ANNOUNCEMENTS PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: This item should be deferred to May 31, 2011, to allow for additional review. Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

### B) ACTION REQUESTED/PURPOSE:

A. Award CN-11-02 Veteran's Park Phase Four to [David M. Jones Jr. & Associates, Inc.](#) (a local firm) for a not-to-exceed amount of \$130,300.00.

B. Authorize Chair to execute Professional Services Agreement.

(#20110370-CONSTRUCTION AND DESIGN)

### FUNDING SOURCE:

Fund – Lehigh Community Park Impact Fees; Program –Parks Capital Project; Project – Lehigh Park Acquisition and Improvements.

### WHAT ACTION ACCOMPLISHES:

Provides the services necessary to modify the previously approved site plan based on the updated improvement program for Veteran's Park.

### MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

## 4. COUNTY COMMISSIONERS

No requests received.

## 5. COUNTY LANDS

No requests received.

## 6. HUMAN SERVICES

No requests received.

**7. INDEPENDENT****A) ACTION REQUESTED/PURPOSE:**

A) Award Project CN-10-17 Design of the Lee Tran Administration, Operations & Maintenance Facility, to [AECOM Technical Services Inc.](#), (local firm), in the not-to-exceed amount of \$1,994,578.00.

B) Also, authorize Chair to execute Agreement on behalf of the Board.

(#20110366-TRANSIT)

**FUNDING SOURCE:**

Fund – Lee County Transit-Capital Grant; Program – Capital Improvement Program; Project

**WHAT ACTION ACCOMPLISHES:**

The Consultant will include but not be limited to providing Civil, Landscaping, Structural, Mechanical, Plumbing, Electrical & Fire Protection Engineering Services and a Transit Maintenance Design consultant for the design of the Proposed Lee Tran Facility. The facility will strive to be LEED certified and accommodate bicycle and pedestrian use.

**MANAGEMENT RECOMMENDATION:**

Approve.

**PULLED FOR DISCUSSION**

At the request of Commissioner Bigelow, Transit Director Steve Myers reviewed the expenses for each phase, and emphasized the project was mostly funded by federal funds. Commissioner Bigelow moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

**8. NATURAL RESOURCES/ SOLID WASTE**

No requests received.

**9. PARKS AND RECREATION**

No requests received.

**10. PUBLIC SAFETY**

No requests received.

**11. PUBLIC WORKS ADMINISTRATION**

No requests received.

**12. TRANSPORTATION**

No requests received.

**13. UTILITIES****A) ACTION REQUESTED/PURPOSE:**

SRF Amendment (BS 20110382/19833, LS/SDG): 1) Approve, and authorize the Chair to sign, [Amendment No. 3 to State Revolving Fund \(SRF\) Loan Agreement WW392330](#), that increases the amount of the loan funding for the construction costs for the Gateway Wastewater Treatment Plant (WWTP) Expansion and the Airport Sewer Transmission line projects. 2) Approve Budget Amendment Resolution in the amount of \$3,559,467.00 received from FDEP. (#20110382-UTILITIES)

**FUNDING SOURCE:**

State Revolving Fund loan in the Utilities Capital Improvement Fund.

**WHAT ACTION ACCOMPLISHES:**

Action secures an additional \$3,559,467.00 at an interest rate of 2.79% to fund the construction of the Gateway WWTP Expansion, and the Airport Sewer Transmission line projects.

**MANAGEMENT RECOMMENDATION:**

Approval.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

RESOLUTION NO. 11-05-07

**B) ACTION REQUESTED/PURPOSE:**

Budget Transfer (BS 20110383/19834, KAM/SDG): Approve [CIP Budget Transfer](#) in the amount of \$361,000.00 from the Corkscrew Road & I-75 Interchange Project and the Daniels Parkway & I-75 Interchange Project, to the DOT Utility Relocations Project; and amend the FY '10/11 CIP Budget accordingly. ([#20110383-UTILITIES](#))

**FUNDING SOURCE:**

Funds: LCU Capital Improvements; Program: Capital Projects; Project: DOT Project Utility Relocations.

**WHAT ACTION ACCOMPLISHES:**

Provides funds for various upcoming DOT related projects.

**MANAGEMENT RECOMMENDATION:**

Approval.

PULLED FOR DISCUSSION

Following Utilities Director Pamela Keyes' response to questions on the Budget Transfer, Commissioner Bigelow moved the item, seconded by Commissioner Manning, called and carried with Commissioner Judah absent.

**14. COUNTY ATTORNEY**

No requests received.

**15. HEARING EXAMINER**

No requests received.

**16. CONSTITUTIONAL OFFICERS**

**A) ACTION REQUESTED/PURPOSE:**

Approve [disbursements](#). The check and wire registers can now be viewed on the Clerk's Website at WWW.LEECLERK.ORG by accessing the BoCC Minutes and Documents link. ([#20110399-FINANCE](#))

**FUNDING SOURCE:**

N/A

**WHAT ACTION ACCOMPLISHES:**

Florida Statute Chapter 136.06 (1) requires that all County disbursements be recorded in the Minutes of the Board.

**MANAGEMENT RECOMMENDATION:**

Compliance with the requirements of FS 136.06 (1).

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

**B) ACTION REQUESTED/PURPOSE:**

Approve the Minutes for the following meetings of the Board of County Commissioners held during the week of May 9 through May 13, 2011:

- May 9, 2011 (Special BoCC at Port)      May 9, 2011 (Management & Planning)
- May 10, 2011 (Regular)                      May 11, 2011 (Joint w/ Bonita Springs)

([#20110400-MINUTES](#))

**FUNDING SOURCE:**

Not Applicable.

**WHAT ACTION ACCOMPLISHES:**

Approval of the Board Minutes, pursuant to Florida Statute 286.011.

**MANAGEMENT RECOMMENDATION:**

Approve.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

**C) ACTION REQUESTED/PURPOSE:**

Approve disbursement of excess funds resulting from the sale of tax deed certificates to the following claimants verified and certified under Florida Statutes 197.582.

<b>Tax Deed No.</b>	<b>Payee</b>	<b>Amount</b>
2007-001368	John F. Costello, CPA POA for Clinton Slack Jr.	\$7,769.94
	John F. Costello, CPA POA for Amanda L. Slack	\$7,769.94
	John F. Costello, CPA POA for Clinton Slack	\$15,539.88

(#20110401-DELINQUENT TAX)

**FUNDING SOURCE:**

Proceeds from a tax deed sale in excess of the taxes and/or liens owed are being held by the Board for disbursements in accord with Florida Statutes, Chapter 197.

**WHAT ACTION ACCOMPLISHES:**

Provides for disbursement of excess tax deed proceeds to an appropriate claimant in compliance with statutory rules and requirements.

**MANAGEMENT RECOMMENDATION:**

Approve disbursement to identified claimants.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

**17. PORT AUTHORITY AND OTHER GOVERNING BOARDS**

No requests received.

**ADMINISTRATIVE AGENDA**

THERE WERE NO ADMINISTRATIVE AGENDA ITEMS SUBMITTED FOR DISCUSSION.

**9:30 A.M. AGENDA ITEM NO.1**– Public Hearing

**1. ACTION REQUESTED/PURPOSE:**

Adopt Resolution of Final Assessment for the Pine Island Shores Channel Dredge Municipal Service Benefit Unit. Also, adopt a Resolution to create a fund for receipt of the estimated prepayments. (#20110363-PUBLIC RESOURCES)

**FUNDING SOURCE:**

MSBU Property Owners, MSBU Restricted Fund.

**WHAT ACTION ACCOMPLISHES:**

Allows staff to proceed with assessing property owners.

**MANAGEMENT RECOMMENDATION:**

Approve.

Assistant County Attorney Scott Covert approved, as to legal form and sufficiency, the [Affidavit of Publication](#) for this item, and briefly described the request. The Chairman called for public comment; and the following concerned citizen came forward:

St. James City resident [Ken Ratterree](#)

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

RESOLUTION NOS. [11-05-08](#) AND [11-05-09](#)

**9:30 A.M. AGENDA ITEM NO.2**– Public Hearing

**2. ACTION REQUESTED/PURPOSE:**

Adopt an amendment to the Lee County Parks and Recreation Ordinance No. 06-26, pertaining to the use, sale, service and consumption of alcoholic beverages on County park property.

(#20110388-COUNTY ATTORNEY)

**FUNDING SOURCE:**

N/A

**WHAT ACTION ACCOMPLISHES:**

Satisfies the statutory requirement to hold one public hearing to amend an Ordinance that does not affect the use of land. If adopted, the amendment will clarify the regulatory permitting requirements applicable to the sale, service and consumption of alcoholic beverages on County park property.

**MANAGEMENT RECOMMENDATION:**

County staff recommends approval of the amendment.

Assistant County Attorney Dawn Perry-Lehnert approved, as to legal form and sufficiency, the [Affidavit of Publication](#) for this item, and informed the Board of a change in the Ordinance since the ordinance that was initially drafted has been revised to seek an amendment that would allow the sale, service, and consumption of alcoholic beverages either through contract or a County Manager approval. The Chairman called for public comment; and the following concerned citizen came forward:

Southwest Florida Lee County Fair Association representative [Artie McIntyre](#)

Commissioner Manning moved approval, seconded by Commissioner Hall. Commissioner Manning stressed a point of clarification that the motion was as revised. Following brief comments by Commissioner Bigelow, the motion was called and carried with Commissioner Judah absent. The Ordinance adopted by the Board and filed was [LEE COUNTY ORDINANCE NO. 11-02, ENTITLED:](#)

AN ORDINANCE AMENDING LEE COUNTY ORDINANCE 06-26, AS AMENDED BY ORDINANCE 10-41, KNOWN AS THE LEE COUNTY PARKS AND RECREATION ORDINANCE TO AMEND SECTION 10.9 PERTAINING TO INTOXICATING BEVERAGES AND ILLEGAL SUBSTANCES TO ALLOW SALE SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES ON COUNTY PARK PROPERTY UNDER CERTAIN LIMITED CIRCUMSTANCES; PROVIDING FOR CONFLICTS, INCLUSION IN THE CODE, SEVERABILITY AND AN EFFECTIVE DATE.

**WALK-ON ITEM NO. 1**

**1. ACTION REQUESTED/PURPOSE:**

Per Florida Statute 195.087 (1) (b), approve a budget amendment, increasing the Personal Services annual salary rate by \$53,718.00. ([#20110425](#)-PROPERTY APPRAISER)

**FUNDING SOURCE:**

N/A

**WHAT ACTION ACCOMPLISHES:**

Satisfies Florida Statute.

**MANAGEMENT RECOMMENDATION:**

Approval.

**REASON FOR WALK ON:**

Necessary due to state required deadline.

DURING THE ANNOUNCEMENTS PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: This item should be omitted from the agenda.

**WALK-ON ITEM NO. 2**

**2. ACTION REQUESTED/PURPOSE:**

Per Florida Statutes 193.501, waive the requirement that an annual application or statement be made for Land Used for Conservation purposes within the County after an initial application is made. ([#20110426](#)-PROPERTY APPRAISER)

**FUNDING SOURCE:**

N/A

**WHAT ACTION ACCOMPLISHES:**

Waives the requirement for annual filing for Land Used for Conservation, if initial application is made.

**MANAGEMENT RECOMMENDATION:**

Approval.

**REASON FOR WALK ON:**

Necessary so implementation can begin.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried with Commissioner Judah absent.

### **WALK-ON ITEM NO. 3**

#### **3. ACTION REQUESTED/PURPOSE:**

Concur with the ranking by the Competitive Negotiations Committee for CN-11-05 Alico Road Alignment Study from Ben Hill Griffin Parkway to Airport Haul Road in the below listed order of ranking (all local vendors), and authorize negotiations with the number one ranked firm. The negotiated contract will be brought back to the Board for approval.

- 1) Stanley Consultants, Inc.
- 2) Johnson Engineering, Inc.
- 3) AIM Engineering & Surveying, Inc.

(#20110387-TRANSPORTATION)

#### **FUNDING SOURCE:**

N/A

#### **WHAT ACTION ACCOMPLISHES:**

Provides a Consultant to develop and study alternative alignments to widen Alico Road to four lanes expandable to six, and accommodate alternative modes of transportation.

#### **MANAGEMENT RECOMMENDATION:**

Approve.

#### **REASON FOR WALK ON:**

If the selection is approved, it is possible to have a contract back to the Board before summer recess so the study can begin as soon as possible.

Commissioner Manning moved approval, seconded by Commissioner Hall. Following comments by Commissioner Bigelow of his long standing objection of the Selection Process; the motion was called and carried with Commissioner Bigelow dissenting, and Commissioner Judah absent.

### **WALK-ON ITEM NO. 4**

#### **4. ACTION REQUESTED/PURPOSE:**

Authorize the County Attorney's Office to file a petition for an administrative hearing concerning the Florida Department of Environmental Protection's Notice of Denial of the Environmental Resource Permit (File No. 36-0295854-002) to the City of Cape Coral for the construction of the replacement for the removed Ceitus barrier and boatlift. Also, authorize the County Attorney's Office to retain experts in engineering and environmental services in the amount of \$68,500.00 and legal services in the amount of \$6,500.00 in support of Lee County's petition. Approve [transfer](#) in the amount of \$75,000.00 from Expert Witness Fees – Okeechobee Releases to Ceitus Boat Lift Expert Witness Fees and Legal Services in Non-Departmental Program. (#20110442-COUNTY ATTORNEY)

#### **FUNDING SOURCE:**

Fund – General Fund; Program – Non-Departmental; Project – N/A.

#### **WHAT ACTION ACCOMPLISHES:**

Gives County Attorney's Office authority to file petition and preserve legal rights to address the noncompliance with the May 18, 2008 Second Amended Consent Order (06-2345-DF).

#### **MANAGEMENT RECOMMENDATION:**

Approve.

#### **REASON FOR WALK ON:**

Necessary in order to meet the 21 day deadline for filing a petition for an administrative hearing concerning the FDEP's Notice of Denial of construction of the replacement for the removed Ceitus barrier and boatlift.

Commissioner Manning moved approval, seconded by Commissioner Hall. Following brief comments by Commissioner Bigelow on the Ceitus barrier and boatlift, the motion was called and carried with Commissioner Judah absent.

### **CARRY OVER ITEM NO. 1**

#### **1. ACTION REQUESTED/PURPOSE:**

Approve the [Right of Entry and Use Agreement](#) between FPL FiberNet and Lee County Board of County Commissioners. This item is a carryover from the May 10, 2011 Board meeting.

(#20110324-INFORMATION TECHNOLOGY GROUP)

**FUNDING SOURCE:**

Not applicable, no cost to the County.

**WHAT ACTION ACCOMPLISHES:**

Provides the County with completed 70+ miles of fiber optic network in return for allowing FiberNet access to spare County-owned fiber/conduit.

**MANAGEMENT RECOMMENDATION:**

Approve.

**REASON FOR CARRYOVER:**

This item was deferred for two weeks at the May 10, 2011 Board meeting.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried, with Commissioner Judah absent.

**COMMISSIONER ITEMS**

**CONGRESS FOR THE NEW URBANISM (CNU)** – Commissioner Bigelow informed that he would be attending the annual CNU in Madison, Wisconsin on June 3-5, 2011; wherein Lee County will be a recipient of the Driehaus Award.

**NON-20/20 ACQUISITIONS** –Chairman Mann informed that the Clerk of Court’s Audit of the County Lands acquisitions should be discussed at next week’s meeting or at a Management & Planning meeting to allow participation by Commissioner Judah. It was also noted that the Conservation 20/20 Audit was not yet released.

**COMMITTEE APPOINTMENTS**

Chairman Mann requested a motion to appoint Thomas E. Koester to the **PARTNERING FOR RESULTS PROPOSAL REVIEW PANEL**, reappoint Phil Martin to the **SAN CARLOS PARK SPECIAL IMPROVEMENT DISTRICT**, and reappoint Jacqueline B. Turner to the **HUMAN SERVICES COUNCIL**. Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

Commissioner Manning moved to reappoint Robbie Roepstorff to the **INDUSTRIAL DEVELOPMENT AUTHORITY**, reappoint Jean DeWalt and Helen Leddy to the **HUMAN SERVICES COUNCIL**, appoint Cheryl L. Admire to the **PARTNERING FOR RESULTS COMMITTEE**, and appoint Jennifer L. Evans to the **ROADWAY LANDSCAPE ADVISORY COMMITTEE**, seconded by Commissioner Hall, called and carried with Commissioner Judah absent.

**COUNTY MANAGER ITEMS**

Deputy County Manager Bill Hammond had no items to be discussed.

**COUNTY ATTORNEY ITEMS**

County Attorney Michael Hunt had no items to be discussed.

**Public Presentation of Matters by Citizens**

Alva resident James D. English expressed disappointment in the response received regarding his complaints on surface water management and other requests.

Realtor Association of Fort Myers and the Beach representative [Stephanie Keyes](#) suggested that in regard to the audit reports of the Clerk of Courts on land purchases, an outside Counsel and Real Estate broker work with staff.

The Chairman adjourned the meeting at 10:13 a.m.

ATTEST:

CHARLIE GREEN, CLERK

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
[Chairman, Lee County Commission](#)