

**CITY COUNCIL MEETING  
October 19, 2023 – 7:00 P.M.  
MINUTES**

1. **CALL TO ORDER:** Mayor Tyson called the meeting to order at 7:00 p.m.
2. **ROLL CALL:**  
**PRESENT:** Council Member Herrera, Council Member Hernandez, Council Member Renick, Attorney Dill, City Manager Matthes and Mayor Tyson  
**ABSENT:** Council Member Salgado-Excused  
**ALSO, PRESENT:** Chief Touchberry, Finance Director Putnam Moreman, Utility Director Kevin Burge and Attorney Rhodeback

3. **PLEDGE OF ALLEGIANCE:** The Pledge was recited.

4. **INVOCATION:** Mayor Tyson gave the Invocation.

5. **APPROVAL OF MINUTES:**

- (a) City Council Meeting of September 21, 2023
- (b) Final Budget Public Hearing of September 21, 2023
- (c) First Budget Public Hearing of September 14, 2023
- (d) Grants Workshop of August 17, 2023

**MOTION** by Council Member Renick **SECONDED** by Council Member Hernandez to approve the minutes for the City Council Meeting of September 21, 2023, Final Budget Public Hearing of September 21, 2023, First Budget Public Hearing of September 14, 2023, and Grants Workshop of August 17, 2023.

**ALL AYES:**

**MOTION CARRIED 4-0**

6. **PUBLIC COMMENTS:**

Mayor Tyson asked if anyone from the public had a comment to state their name and address for the record, hearing none he continued with Manager's Matters.

7. **MANAGER'S MATTERS:** Manager Matthes continued with his matters.

- **Joint City/Conty Agenda items** – He gave a draft agenda on items that staff is recommending they speak about and asked Council what agenda topics they might want to talk about. That meeting has not been scheduled yet so there's still time for them to refine what they would like to talk about.
- **Advance Purchase of 97<sup>th</sup> Street Property** – This is the project the city is doing the flood mitigation on, and they are having to buy some portions of people's front yards to officially designate the road, pave the road, put in some drainage and there's one house that would not sell their front yard and made the city buy the whole property. He recommended they use ARPA money to go ahead and buy that property outside the grant, to avoid placing the grant burdens on that purchase, they will still need to buy it through the Uniform Relocation Act but that doesn't mean they are putting the grant burdens on them. And they city would sell a balance of the property back probably to the future apartment builder. Council agreed to move forward with that purchase. Manager Matthes stated he would make that formal.
- **Hazard Pay Permanency for Lieutenant**- When working through the budget he did not realize how much Lieutenant often uses a line worker when there's people out on vacation or sick. He's actually on the road even as a lieutenant. He asked Council if they can go ahead and make his hazard pay permanent. They did not do that in the budget because they treated him as kind of like director level, and he is below that. He asked if they can retroactively give him that 3% hazard pay permanent in his salary starting from October first. Council Agreed.
- **FWCD Joint Meeting Follow up**- The FWCD has started a conversation about them giving the City of Fellsmere \$23 for each account, that would be benefiting from these red lines from the attachment and then entering in an interlocal with the City of Fellsmere, where the city would maintain those. He is recommended to do only the ditches that touch the city. And he went a little bit outside the city just to cover the entire ditch. He asked Council if they are okay with him continuing conversation with FWCD. Council Agreed.
- **Volunteer required for MPO Citizen involvement Committee**- Still looking for a volunteer.

- **Sonrise Villas request for Public hearing-** They currently have Code Violation, and he has not seen any improvements from them on the violation. The violation relates to their drainage system not operating along the northern property line. They can rely upon code enforcement, but he would also like to bring them before the Council. He would like to hopefully end up with a requirement that they hire an engineer to analyze that area and find out if there are any changes to the design that would further keep water from going on their neighbor's property. Council Agreed.
- **Proposed Cell Tower CR512/ 93<sup>rd</sup> (in IRC)-** Right now, what's proposed is on County Road 512, almost probably no more than a 50-foot setback. He does not know how far they need to be setback not to worry about the aesthetics of a cell tower. He stated that this would be across the street from the brand-new development. He asked the Council if they would like him to ask to get the tower pushed a little bit further off the road. Council Agreed.
- **NY Ditch Pipe RFP-** The City received one response to the RFP was for twice as much as their estimate. It turns out after taking a closer look at the plans and the estimate, it was a poor job of their engineer to put that estimate together. There were a lot of errors in it. The project was never the million dollars we thought it was, particularly the way he designed it; it was way overdesigned. There is a new engineer, and they will be bringing back a work authorization amendment for the November meeting, to authorize some money for him to devalue engineering on the project to reduce some of this over design, as well as to take a close look at their specifications just to make sure they're tight. They will probably have that back on the street in November, with bids coming middle December, and then under contract by January, they are still okay with the grant. The grant doesn't expire till August next year.
- **January 18, 2024, CC meeting-** This meeting will fall on a Frogleg Festival night and will have to be changed. It was decided to keep the one meeting on January 4<sup>th</sup> and if another meeting is needed, they will schedule a second meeting.
- **Existing Sign Standards-** He has an application from Treasure Coast Community Health to replace their sign, a photo was shown to the Council of what they would like but is currently not allowed by code. Manager Mathes stated that it would have to be a code change if it is allowed. The council agreed not to make the change.
- **SELF request for letter of support-** Manager Mathes has a request for a letter of support but wanted to get permission from the Council. The Council agreed not send a letter of support. Manager Mathes asked if they want to continue let them do business in Fellsmere. Council agreed to leave it a status quo.
- **RV as an accessory living until –** He was asked if an RV can be used as an accessory living unit. Council agreed to keep the code as is and not allow it.
- **Toy for Tots drop box in City Hall**

#### 8. MAYOR'S MATTERS:

- (a) Police Department Report- September 2023
- (b) Public Works Department Report- September 2023
- (c) Water System Monitoring Report
- (d) Grants Report
- (e) Status of Developments Report
- (f) Finance Department Reports

Mayor Tyson attended the Treasure Coast League of Cities with Mark and Maria at the City of Stuart, and the guest speaker Jackie Thurlow-Lippisch a friend of his and is a very strong advocate for cleaning up the rivers and water.

#### 9. COUNCIL MEMBER'S MATTERS:

**Council Member Herrera-** He had no matters.

**Council Member Hernandez –** She attended the Beach and Shores Meeting and shared project updates.

They were actually very happy that they haven't had to relocate any of the nests but they're keeping a close eye in case they have to relocate them. They talked about some vessels that were removed from Sebastian and they're going to be seeking reimbursement.

They also had a joint meeting with Sebastian and the state is giving them up to 2030 to get on to sewer but they do not think that's reasonable time. Mayor Tyson commented that Fellsmere will have to do that too.

**Council Member Renick –** He stated he attended the Florida League of Cities Legislative committee, he is part of the utilities, natural resources, and public works. And their committee determined that the

stormwater rule is a statewide stormwater rule and other aspects of that were probably the most important issue in their committee recommended to move forward to hopefully pursue some legislation this coming year. And the secondary was PFAS, it's a new issue that is starting to gain a lot of attention these days as far as being a carcinogen and affecting our drinking water supply and natural resources.

**10. CITY ATTORNEY'S MATTERS:** Attorney Dill stated he had no matters.

Eric Boissant – 144 N. Cypress St. – He came to the podium and expressed several concerns with the Council. City Manager Mathes answered his questions.

**11. NEW BUSINESS:**

- (a)** Approval of Purchase of seven Radar Speed signs from All Traffic Solutions (ATS) in the amount of \$24,812.55.

Manager Mathes stated this was something the Council recently approved at their last ARPA update to fund this because one of the things that came out of the survey for our residents during the budget was speeding was a concern. There are multiple signs that they can put on a stop sign or speed limit sign or a signpost by itself that they can put around on the problem roads and it's one of those flashers. If you're going too fast, it's going to flag your speed. If you're on the right speed, it will give you a nice quiet green number.

Chief Touchberry added that they are solar powered to increase their lifespan. He sees them as a means to increase voluntary compliance with the speed laws. He thinks it is a good measure to show the community that they are concerned about speeding as much as they are, and that they can't be everywhere, and these will be like a force multiplier. They also have another grant that they have access to and once they get the approval to spend it will come back to council with probably some more signs if not maybe a trailer to tote some of those signs around so they can make sure we have enough throughout the city.

Being no further discussion Mayor Tyson entertained a motion.

**MOTION** by Council Member Hernandez **SECONDED** by Council Member Herrera to approve the purchase of seven (7) Radar Speed signs from All Traffic Solutions (ATS) in the amount of \$24,812.55.  
**ALL AYES:** **MOTION CARRIED 4-0**

- (b)** Authorizing to piggyback off of the Charlotte County Contract, Bid Number 2021000541 to purchase two (2) Police Vehicles from Bartow Ford in the amount of \$110,011.08.

Manager Mathes stated if this item is approved, it would need to be approved subject to the Council's approval of the Marine Bank loan that will be paying for these. He reminded Council that they used Marine Bank two years ago to purchase the first round when they started this replacement program every five to seven years. In the second year, they used the USDA grant. This third year they are going back to Marine Bank because they want to save the USDA grant for a large piece of equipment that Public Work's needs, and they can only have one open grant at a time.

Being no further discussion Mayor Tyson entertained a motion.

**MOTION** by Council Member Herrera **SECONDED** by Council Member Hernandez to approve the purchase of two (2) Police Vehicles from Bartow Ford in the amount of \$110,011.08 subject to the Marine Bank loan.  
**ALL AYES:** **MOTION CARRIED 4-0**

- (c)** Approval of Vertical Bridge VBTS, LLC lease agreement for Cell Tower and authorize Mayor to execute lease.

Manager Mathes stated Attorney Rhodeback was assigned to this agreement. Attorney Rhodeback stated that in regard to the exclusivity they eliminated that entire provision, so there is no exclusivity provision. The second big issue was that the city was not going to waive or subordinate their lien rights and they agreed with the city.

Susan Adams asked questions in regard to the location and revenue of the tower. She stated that it seems very inappropriate to have a cellphone tower in a historic cemetery. As a citizen of the city, she stated it seems disrespectful.

Manager Mathes stated that this lease does not result in a tower they still have to go through the county's process of getting a permit in and obviously during that process, they can certainly intervene and address the issues about graves that might be uncovered and things of that nature. This is just giving them more level of comfort to go forward that process and obviously binds the city to let them go through that process and if they are successful binds the city to let them be successful.

Attorney Rhodeback stated that the agreement does provide they have to get all necessary government approvals, most of which have nothing to do with the city. The role the city would serve as affected property owners during the approval process more so than jurisdictional or governing authority over what the site plan is going to look like, what the specs are going to be for the tower that's going to go to somebody else for those determinations, buffering requirements, etc.

Manager Mathes stated to the Council this is their last opportunity to say no if that is their pleasure. He asked Attorney Rhodeback if there are there any implications to Council at this point, if they decide this is not what we want to do.

Attorney Rhodeback responded absolutely not. The city has a letter of intent. The letter of intent is not a binding contract or binding aspects to it. But none of which was promised as you would enter into this particular lease agreement. So yes, if Council wants to back out, they absolutely can back out. And if they are going to back out the time to do so is probably now.

Council Member Renick suggested the subterranean investigation before we sign a lease just out of respect. Manager Mathes added that he would suggest that they make that burden on them since they want to lease the land.

Attorney Dill suggested that they table this tonight and give them an opportunity to prepare an additional paragraph to the lease requiring the ground penetrating radar be used and also talk to them about what the city's desires.

**MOTION** by Council Member Herrera **SECONDED** by Council Member Hernandez to table this item.  
**ALL AYES:** **MOTION CARRIED 4-0**

**(d) RESOLUTION NO. 2023-47/** A RESOLUTION OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA AMENDING THE STANDARD OPERATING PROCEDURES FOR THE ADMINISTRATION OF THE CITY OF FELLSMERE; PART 4, POSITION PAY PLAN; PART 4, PAY BY POSITION; SECTION 6 – PROBATIONARY PERIOD; SECTION 10.6 TRANSFER TO OTHER EMPLOYEES; SECTION 11 - MISCELLANEOUS LEAVES; SECTION 14.08 INTERNET/EMAIL/SOCIAL MEDIA; SECTION 14.10 CITY CELL PHONES; SECTION 14.11 MANDATORY MEETINGS; PROVIDING FOR RATIFICATION, AMENDMENT, SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2023-47 by title only.

Manager Mathes stated this is something they will be doing every year to readopt a at a minimum, the position Pay Plan and the pay by position, which are updated with each budget. There's just a few others and the organizational chart if they do any staff adjustments. He recommended going to a 12-month probationary period for department heads, because it is a critical position to hire, and six months is not enough time to see them in action. He also wanted to formalize allowing employees to donate their sick time. He also added the ability for the city manager to monitor an employee's computer usage. On the cell phones he made it simpler on the policies just a flat reimbursement or actual cost whichever is less. And he also created a mandatory all staff meeting policy where the city can compensate the employee for attending.

Being no further discussion Mayor Tyson entertained a motion.

**MOTION** by Council Member Herrera **SECONDED** by Council Member Renick to approve Resolution No. 2023-47.  
**ALL AYES:** **MOTION CARRIED 4-0**

**(e) RESOLUTION NO. 2023-46/** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE DAUGHTERS OF THE AMERICAN REVOLUTION (DAR) HISTORIC PRESERVATION GRANT PROGRAM REQUESTING \$10,000.00 FOR GROUND PENETRATING RADAR (GPR) AND GLOBAL POSITIONING SYSTEMS (GPS) SERVICES TO CREATE A COMPREHENSIVE MAP OF THE BROOKSIDE CEMETERY AND FURTHER AUTHORIZING THE EXPENDITURE OF FUNDS UP TO \$10,000.00 FROM THE CEMETERY FUND TO FULFILL THE CITY'S LOCAL MATCH REQUIREMENT UNDER THE GRANT.

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2023-46 by title only.

Grant Administrator Laura Hammer stated that the DAR the Daughters of the American Revolution have let the city know that they would like to give the city the grant money and the maximum amount of \$10,000. They apparently annually have \$250,000 to give out. And they are very interested in the work that the city wishes to do at their cemetery, but the DAR grants are matching. If they give the maximum amount of 10,000, they are asking for the \$10,000 in matching funds. Public Works Director Andy Shelton has gotten a quote from a company, and they provide ground penetrating radar and mapping services. In addition to them finding out where bodies are located, they will also be able to provide a map which will be useful in the future as more people choose to be buried in the cemetery. The application is due by October 31<sup>st</sup>. She added that in regard to the conversation about the cell tower, DAR has announced that they plan to award the grant monies in May 2024.

Council Member Renick asked if they are able to do the ground penetrating and then get reimbursed later. Grant Administrator Hammer stated she does not know if DAR will do an advance or not. Manager Mathes suggested they reach out to the DAR regarding a pre-award authority. Grant Administrator Hammer will reach out to Holly Hamilton and can come back to Council at the next meeting.

Being no further discussion Mayor Tyson entertained a motion.

**MOTION** by Council Member Renick **SECONDED** by Council Member Hernandez to approve Resolution No. 2023-46.

**ALL AYES:**

**MOTION CARRIED 4-0**

Manager Mathes wanted direction from Council in regard to the cell tower negotiations. The is simply direction to the city attorney's office ask the cell tower company the questions that were asked and work out a solution. But there was no direction of the city attorney to ask for a monetary contribution towards something that either the city would do, or that they would upfront the cost of something that the city is going to be doing anyway in the future. He reminded Council that they are getting \$5000 up front that they can do anything they want with. He asked if Council would like to ask for more upfront, either related to this issue about ground penetrating radar or just in general increasing the \$5000 to a different number,

Council Member Renick stated to increase because they have other costs associated with their due diligence.

Manager Mathes asked Attorney Dill if there is any clause in this lease that requires them to pay for any and all costs related to the approval of this lease, which means reimbursing the city attorney for their time. He suggested as a blanket position he thinks it would only be fair that it be a city policy, anytime the city is doing something for somebody, there should always be a condition in there, they are going to pay the city for this cost, because they are only incurring this cost because of them, which is what the city does for development, what they do for pretty much everything else. He asked Council that to be added and that would cover the attorney's fees.

Manager Mathes asked Council if they wanted to add the three conditions. That they must know there's nobody buried in that site before they sign the lease. Second, they are going to increase the due diligence to \$10,000. And last, there's going to be a clause in there that they pay for all cost of approval. The council agreed.

Attorney Dill stated that the \$5000 is an option fee, and they have a second year for another \$5000. Manager Mathes added that is because it may take more than a year to get the approvals from the



permitting agencies. Manager Mathes also suggested to ask for \$10,000 for the first and \$5000 for the second. The council agreed. Attorney Warren Dill stated he will bring this back to the council.

**(f) RESOLUTION NO. 2023-51/** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FELLSMERE, FLORIDA, RELATING TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) STATE REVOLVING FUND (SRF), ADOPTION OF THE WASTEWATER FACILITY PLAN FOR THE IMPLEMENTATION OF THE COUNTY ROAD 512 FORCE MAIN EXTENSION IMPROVEMENTS, EFFECTIVE THIS DATE

Mayor Tyson introduced the Resolution and Attorney Dill read Resolution No 2023-51 by title only.

Manager Mathes stated this is related to the sewer extension to the farm. This is the first time they have worked with this funding source. They are kind of learning the grant application requirements as they go. The city hired a firm to help them, it wasn't the best relationship, but they are getting through it. And one of the things that they learned at the last minute that they need to do is to have a formal adoption of this facilities plan. He did not provide the attachments because they're like 200 pages. But most of the attachments are things that the Council have already seen and approved like prior resolutions or administered forms which he executes as the city manager. But they are available if they would like to see the attachments, they just provided the actual base facility plan. His hope is that they are funded, ranked high enough at the November priority list to be funded in early next year to actually be able to build that sewer pipe to the farm. He added that there will be a grant partnership agreement that they will enter between the city and the farm prior to grant execution, because there will be a loan component. If this pipe is for them, the city shouldn't have to pay that loan, that should be for the farm to pay. The farm has paid \$80,000 for the design and they are going to pay the loan. The city may come to an agreement, it is the city's choice to use some of the revenue for that. That's just a discussion they will have when they get to that point. And then they will also be going to be committed to supplement the flow of sewage. Because until they build out that commerce park, there may not be enough flow in the pipe for it to work properly. They may have to augment it with either ditch water or well water, so they have enough flow in there. They will come back with that agreement at the proper time to make sure that the city has the burdens where they belong if there are burdens on this grant.

Mayor Tyson asked if the only money they have so far for this is the \$750,000. He asked how much is the project going to take. Manager Mathes responded with about 3 million dollars. The grant is estimated to be an 80% grant and a 20% loan, it comes to about a \$600,000 loan at a 2% interest over 30 years. The farm and their tenants should be able to handle that.

Being no further discussion Mayor Tyson entertained a motion.

**MOTION** by Council Member Hernandez **SECONDED** by Council Member Renick to approve Resolution No. 2023-51.

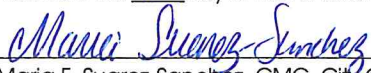
**ALL AYES:**

**MOTION CARRIED 4-0**

## **12. ADJOURNMENT:**

There being no further business Mayor Tyson adjourned the meeting at 8:26p.m.

These minutes were approved by the City Council of the City of Fellsmere this 2 day of November 2023

  
Maria F. Suarez-Sanchez, CMC, City Clerk  
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