RESOLUTION NO. 2026 – 06

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, USING THE UNIFORM METHOD OF COLLECTING NON-AD VALOREM ASSESSMENTS LEVIED WITHIN THE MUNICIPAL BOUNDARIES OF THE VILLAGE OF ESTERO TO ADOPT A NON-AD VALOREUM ASSESSMENT ROLL FOR THE DECOMMISSIONING OF THE WASTE WATER PACKAGE FACILITY AND INSTALLATION OF COMMON SANITARY SEWER SERVICE FOR SUNNY GROVE PARK, INC.; STATING THE NEED FOR SUCH LEVY; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Estero has within its boundaries an existing residential community known as Sunny Grove Park (SGP), which is owned by Sunny Grove Park, Inc.; and

WHEREAS, as an older community, SGP is not connected to the centralized sanitary sewage system but instead has been served by what is known as a "package plant" which treats sewage onsite; and

WHEREAS, the Village has for some years been planning to address such circumstances within the Village by planning and assembling funding for a series of Utility Extension Projects (UEP) to include the SGP project (the "Project"); and

WHEREAS, the Village has determined that the SGP package plant is failing and has contributed to discharges which are harmful to the SGP community's property values, its environment, water quality, and which are inconsistent with state and federal environmental regulations which the community's package plant are subject to; and

WHEREAS, "[s]special assessments are 'charge[s] assessed against [the] property of some particular locality because that property derives some special benefit [from] the expenditure of [the] money.' " *City of Gainesville v. State*, 863 So.2d 138, 144 (Fla. 2003); and

WHEREAS, to the extent any particular lot or land within the assessment area is vacant, vacant lots and lands, may, and usually do, receive present special appreciable benefit from construction of sewer in proximity with and accessible by them for sewerage purposes sufficient to sustain an assessment made on basis of benefits. *Meyer v. City of Oakland Park*, 219 So.2d 417 (1969); and

WHEREAS, to create a special assessment, the property assessed must derive a direct, special benefit from the service provided and that the assessment must be fairly and reasonably apportioned among properties that receive the special benefit and irrespective of the size of the geographic area being assessed, the test for the validity of a special assessment is not merely whether some benefit results from the assessment, but rather whether the improvement or service

provides a direct, special benefit to the real property burdened. *Donnelly v. Marion County*, 851 So.2d 256 (Fla. 5th DCA 2003), review denied 860 So.2d 978; and

WHEREAS, a local government's legislative determination of a special benefit warranting a special assessment carries presumption of correctness and there is a presumption of special benefit to all property abutting on or directly served by the project, for purposes of determining whether special assessment may be made. *Hanna v. City of Palm Bay*, 579 So.2d 320 (Fla. 5th DCA 1991); and

WHEREAS, the use to which property is voluntarily put at time of assessment to finance a local improvement is not determinative of whether such property has either greater or less benefits accruing than other property in improvement district, since proper measure of benefits accruing from improvement is not limited to use which is made of improvement at that time, but extends to use which could be made of improvement in the future on property being devoted to any use which reasonably might be made of it. *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970), adopted 245 So.2d 253; and

WHEREAS, the apportionment of assessments on real property to finance contemplated improvements, such as local sewer improvements, is a legislative function and if reasonable men may differ as to whether property assessed was benefited by improvement, determination of the city officials as to such benefits must be sustained. *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970), adopted 245 So.2d 253; and

WHEREAS, although a court may recognize valid alternative methods of apportionment, even if such other methods of apportionment may also appear to be valid, the method used by the municipality must be upheld unless it is determined to be arbitrary and so long as the legislative determination by the City is not arbitrary, a court should not substitute its judgment for that of the local legislative body. *City of Winter Springs v. State*, 776 So.2d 255, 259 (Fla. 2001); and

WHEREAS, the Project will result in the decommissioning and demolition of the SGP package plant and placing the SGP community onto the Lee County Utilities sanitary sewer system; and

WHEREAS, prior to determining to proceed with a non-ad valorem assessment for the Project, the Village retained the services of an independent utility consulting firm which specializes in the study of community-specific utility projects and developing appropriate assessment methodology; and

WHEREAS, the Village has received the consulting firm's report and recommendations with respect to the Project which contains the consultant's findings of special benefit and the proposed assessment apportionment and apportionment methodology; and

WHEREAS, the Village Council has considered the consulting firm's report and recommendations and specifically finds that the Project will convey special benefits to SGP including:

- The enhancement of resident health by removing the risks of potential environmental contamination often associated with older or on-site treatment systems;

- Elimination of the burden of maintenance and liability for individual outdated package systems;

- Ensuring a more reliable and sanitary waste disposal method for residents as opposed to the current, less effective means of treating wastewater;

- Increase in the marketability and value of the overall property and homesites therein since a reliable connection to centralized sanitary sewer is a key selling point that can make a property more attractive to prospective buyers;

- Increase of the utility of property within the assessment area by reducing the land needed for on-site package sewage treatment facilities;

- Future development and redevelopment potential of the assessment area or parcels within the assessment area is improved, which in turn provides a greater return on investment for property owners;

and

WHEREAS, the Village's Public Works staff have advised the Council that there would be no need for the Village to undertake the Project but for the unique need for the community within the assessment area to decommission its existing package plant and become connected to and gain the use of the central sewer system; and

WHEREAS, similar findings have been found by the Florida Supreme Court in *Citizens Advocating Responsible Environmental Solutions, Inc. v. City of Marco Island*, 959 So.2d 203 (Fla. 2007) to support a special assessment for a sanitary sewer conversion project; and

WHEREAS, the Village Council finds that the apportionment methodology recommended by the utility consultant and adopted by the Village Council is a fair apportionment methodology; and

WHEREAS, Florida Statutes § 197.3632(3)(a) requires that if the Village desires to use the uniform method of collecting a non-ad valorem assessment for the first time shall adopt a resolution at a public hearing prior to January 1 or, if the property appraiser, tax collector, and Village agree, March 1, which resolution shall clearly state its intent to use the uniform method of collecting such assessment; and

WHEREAS, as authorized by Florida Statutes § 197.3632, the Village Council intends to utilize the uniform method for collecting non-ad valorem capital project assessments imposed over a number of years to recoup capital construction costs of the Project for the existing residential area known as Sunny Grove Park and owned by Sunny Grove Park, Inc.; and

WHEREAS, in accordance with Florida Statutes § 197.3632(3)(a), the Village Clerk published notice of the Village's intent to use the uniform method for collecting such assessment, and notice of a public hearing to consider adoption of this Resolution, one time per week in a newspaper of general circulation within Lee County for four consecutive weeks preceding the hearing to adopt this Resolution; and

WHEREAS, on December 3rd 2025, the Village Council for the Village of Estero held a duly noticed public hearing and adopted Resolution 2025-24 confirming the Village's intent to use the uniform method of assessment; and

WHEREAS, as required by Florida Statutes § 197.3632(2), the Village has agreed with the property appraiser and tax collector in writing regarding reimbursement of the necessary administrative costs incurred by those offices related to the assessments imposed pursuant to this Resolution; and

WHEREAS, Florida Statutes § 197.3632(4)(a), a local government must adopt a non-ad valorem assessment roll at a public hearing where the assessment levy is being set for the first time; and

WHEREAS, pursuant to Florida Statutes § 197.3632(4)(b), the Village Clerk noticed the public hearing in the newspaper and by first class mail as the statute requires; and

WHEREAS, at the public hearing conducted to adopt this Resolution, the Village Council afforded the opportunity for the public to submit any written objections to the assessment, or to provide testimony regarding the assessment; and

WHEREAS, having conducted the public hearing, the Village Council finds that it is in the best interests of the Village, its residents, businesses, and its environment, to adopt this Resolution.

NOW, THEREFORE BE IT RESOLVED, by the Village Council of the Village of Estero, Florida, that:

Section 1. Restatement of Declaration of Need: The Village Council for the Village of Estero is utilizing the uniform method for the collection of non-ad valorem capital project assessments to recoup capital construction costs for the Project, commencing on October 1st 2026. The Council confirms, as elaborated on in this Resolution's exordial clauses, that there is a public purpose for the Project and need for the levy. The levy is necessary to ensure that the property owners benefitted from the Project bear their proportional share of the Project's costs so such costs are not borne by all Village property owners.

Section 2. **Legal Description**: Pursuant to Florida Statutes § 197.3632(3)(a), a legal description of the boundaries of the real property subject to the levy is attached hereto and incorporated herein as **Exhibit "A"**.

Section 3. **Total Project Cost**: The final total cost of the Project is **$ 2,696,072** (if Project is paid through annual assessments) and **$2,183,818** (if all owners pre-pay by August 15th 2026).

Section 4. **Unit of Measurement**: The Unit of Measurement is inapplicable to this Project inasmuch as the parcel is owned by a single owner. However, the owner intends to collect individually from unit owners and if an annualized assessment were to be done, each owner would be required to pre-pay **$14,089** (which owner intends to collect from each unit owner separately).

Section 5. **Methodology**: The method of apportioning the Project cost among the parcels of property located within the assessment area is set forth in the utility consultant's April 8th 2026 assessment memo, incorporated herein as **Exhibit "B"**.

Section 6. **Reallocation**: In the event the property within the assessment area is further subdivided during the assessment period, the Village Council will adopt a reallocation assessment roll.

Section 7. Final Levy: In accordance with Florida Statutes § 197.3632(4)(a)-(b), and having received the information from the Property Appraiser by June 1st 2026, the Village Council adopts the non-ad valorem assessment roll provided by the Appraiser and the assessment set forth in this Resolution and **Exhibit "B"**.

BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, provision or word of this Resolution is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision, as the Village Council would have adopted the Resolution even absent the invalid part.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon adoption.

DULY ADOPTED with a quorum present and voting this 20th day of May, 2026.

Attest:

_____
Joanne Ribble, Mayor

_____
Carol Sacco, Village Clerk