

**RESOLUTION 20-08**

**A RESOLUTION SUPPLEMENTING RESOLUTION NO. 03-55 OF THE CITY OF MARCO ISLAND, FLORIDA, AS AMENDED; AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$60,000,000 CITY OF MARCO ISLAND, FLORIDA TAXABLE UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2020, TO REFUND A PORTION OF THE CITY'S OUTSTANDING UTILITY SYSTEM REFUNDING REVENUE BONDS, SERIES 2013 AND TO PAY TRANSACTION COSTS; PLEDGING THE PLEDGED REVENUES FOR THE PAYMENT OF SUCH BOND ON PARITY WITH CERTAIN EXISTING CITY INDEBTEDNESS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT AND A FORWARD DELIVERY AND DIRECT PURCHASE AGREEMENT; APPOINTING AN ESCROW AGENT AND A VERIFICATION AGENT; AUTHORIZING A NEGOTIATED SALE OF THE SERIES 2020 BOND BASED ON THE TERMS DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council (the "City Council") of the City of Marco Island, Florida (the "Issuer") adopted Resolution No. 03-55 on September 29, 2003 (the "Original Resolution"); and

**WHEREAS**, the City Council of the Issuer adopted Resolution No. 05-71 on October 17, 2005 (together with the Original Resolution, the "Bond Resolution") to amend certain provisions of the Original Resolution; and

**WHEREAS**, all capitalized undefined terms shall have the meanings ascribed thereto in the Bond Resolution; and

**WHEREAS**, Section 20(Q) of the Bond Resolution provides that Additional Parity Obligations may be issued under the Bond Resolution, subject to the conditions set forth therein; and

**WHEREAS**, pursuant to the Bond Resolution, (i) on December 5, 2006, the Issuer issued \$5,500,000 in original principal amount of its Utility System Revenue Bond, Series 2006 (the "Series 2006 Bond"), of which \$1,691,217.21 aggregate principal amount remain Outstanding, (ii) on April 1, 2010, the Issuer issued its \$50,475,000 Tax-Exempt Utility System Improvement and Refunding Revenue Bonds, Series 2010A (the "Series 2010A Bonds"), of which \$1,315,000.00 aggregate principal amount remain Outstanding, (iii) on August 23, 2011, the Issuer issued its \$26,253,513.01 Tax-Exempt Utility System Refunding Revenue Bond, Series 2011 (the "Series

2011 Bond"), of which \$7,082,161.47 aggregate principal amount remain Outstanding,(iv) on August 13, 2013, the Issuer issued its \$61,995,000 Utility System Refunding Revenue Bonds, Series 2013 (the "Series 2013 Bonds"), of which \$60,495,000.00 aggregate principal amount remain Outstanding, and (v) on December 7, 2016, the Issuer issued its \$38,520,000 Utility System Refunding Revenue Bonds, Series 2016 (the "Series 2016 Bonds"), of which \$38,520,000.00 aggregate principal amount remain Outstanding, all as an Additional Parity Obligation thereunder and all of which a total of \$109,103,378.68 aggregate principal amount remain Outstanding as of the date hereof; and

**WHEREAS**, the Issuer has determined to supplement the Bond Resolution to authorize the issuance of not to exceed \$60,000,000 City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020 (the "Series 2020 Bond"), as an Additional Parity Obligation to (i) refund all of the Series 2013 Bonds, which mature on and after October 1, 2024 (the "Refunded Bonds"), and (ii) pay the costs of issuance of the Series 2020 Bond; and

**WHEREAS**, the Issuer has determined it to be in the best interests of the rate payers of the Issuer and to serve a public purpose to provide in this Supplemental Resolution for the issuance of the Series 2020 Bond and the use of other legally available funds of the Issuer for purposes heretofore stated to realize significant net present value debt service savings, and this resolution shall constitute a Supplemental Resolution for purposes of the Bond Resolution; and

**WHEREAS**, the Series 2020 Bond shall be secured by the Pledged Revenues on parity and with an equal lien as to the Series 2006 Bond, the Series 2010A Bonds, the Series 2011 Bond, the Series 2013 Bonds not being refunded through the issuance of the Series 2020 Bond, the Series 2016 Bonds and any Additional Parity Obligations issued following the issuance of the Series 2020 Bond (collectively, the "Parity Bonds"); and

**WHEREAS**, pursuant to the Bond Resolution, the Issuer is permitted to incur "Subordinated Debt" which are obligations payable from Pledged Revenues on a junior, inferior and subordinate basis to the Parity Bonds and any Additional Parity Obligations issued in the future; and

**WHEREAS**, pursuant to the Bond Resolution, on May 26, 2011, the Issuer entered into the Drinking Water State Revolving Fund Construction Loan Agreement DW110301 with the State of Florida Department of Environmental Protection (as amended, the "2011 FDEP Loan Agreement"); and

**WHEREAS**, the 2011 FDEP Loan Agreement is Subordinated Debt and is payable from Net Revenues on a junior, inferior and subordinate basis to the Bonds; and

**WHEREAS**, pursuant to the 2011 FDEP Loan Agreement, the Issuer borrowed \$5,309,320; and

**WHEREAS**, pursuant to the Bond Resolution, the Issuer may incur additional Subordinated Debt in the future, subject to satisfaction of certain requirements therein and in the 2011 FDEP Loan Agreement; and

**WHEREAS**, the Series 2020 Bond shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of the Constitution of the State, but shall be payable solely from and secured by a first lien upon and pledge of the Pledged Revenues in the manner and to the extent provided herein and in the Bond Resolution, and no Holder of the Series 2020 Bond issued hereunder and under the Bond Resolution shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real or personal property therein, or to compel the Issuer to pay such principal and interest from any other funds of the Issuer; and

**WHEREAS**, except as described above, the Pledged Revenues are not pledged or encumbered in any manner; and

**WHEREAS**, the Issuer desires to appoint Wells Fargo Bank, National Association as Escrow Agent with respect to the Refunded Bonds, and to authorize the execution and delivery of an Escrow Deposit Agreement, a form of which is attached hereto as Exhibit D (the "Escrow Deposit Agreement"); and

**WHEREAS**, the Issuer desires to appoint Robert Thomas CPA, LLC as Verification Agent with respect to the Refunded Bonds; and

**WHEREAS**, following a competitive solicitation of bank loan proposals conducted by the Financial Advisor (hereinafter defined), the Issuer has determined to accept the proposal from PNC Bank, National Association (the "Lender") to purchase the Series 2020 Bond.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:**

**Section 1: *Definitions.*** All capitalized undefined terms shall have the same meanings as set forth in the Bond Resolution. In addition, the following terms, unless the context otherwise requires, shall have the meanings specified in this Section. Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations:

"Business Day" shall mean any day except any Saturday or Sunday or day on which the Principal Office of the Lender is closed.

"Escrow Deposit Agreement" shall have the meaning ascribed thereto in Section 7 hereof.

"Financial Advisor" shall mean PFM Financial Advisors LLC, or any other financial advisor appointed from time to time by the Issuer.

"Permitted Lender" shall mean any affiliate of the Lender or any bank, trust company, savings institution, insurance company or qualified institutional buyer under Rule 144A promulgated under the Securities Act of 1933.

"Principal Office" shall mean, with respect to the Lender, the office located at 16740 San Carlos Boulevard, Fort Myers, FL 33908, or such other office as the holder may designate in writing to the Issuer.

"Resolution" shall mean, the Bond Resolution as supplemented by this Supplemental Resolution.

**Section 2:** *Authority for this Supplemental Resolution.* This Supplemental Resolution is adopted pursuant to the Act and the Bond Resolution.

**Section 3:** *Findings.* It is hereby found and determined that:

(A) The Issuer deems it beneficial and in its best financial interest to provide for the refunding of the Refunded Bonds through the issuance of the Series 2020 Bond to achieve net present value debt service savings. Issuance of the Series 2020 Bond to refund the Refunded Bonds satisfies a public purpose.

(B) The Issuer deems it necessary, desirable and in the best interest of the Issuer that the Pledged Revenues be pledged to the payment of the principal of and interest on the Series 2020 Bond; provided, however, the Series 2020 Bond shall not be secured by the Reserve Fund or any subaccount created therein.

(C) The estimated Pledged Revenues to be derived in each year hereafter from the operation of the System will be sufficient to pay the principal of and interest on the Series 2020 Bond and the Parity Bonds, as the same become due, and all other payments provided for in the Resolution.

(D) The principal of and interest on the Series 2020 Bond, the Parity Bonds and all other payments provided for in the Resolution will be paid solely from the sources therein provided in accordance with the terms thereof; and no ad valorem taxing power of the Issuer will ever be exercised nor will the Holder of the Series 2020 Bond have the right to compel the exercise of such ad valorem taxing power or the use of ad valorem tax revenues to pay the principal of or interest on the Series 2020 Bond or to make any other payments provided for in the Resolution, and the Series 2020 Bond shall not constitute a lien upon the System or upon any other property of the Issuer or situated within its corporate territorial limits, except the Pledged Revenues.

(E) It is necessary, appropriate and in accordance with Section 20(Q)(7) of the Bond Resolution that the City Council adopt this Supplemental Resolution at this time in order to authorize the issuance of the Series 2020 Bond based on the terms and conditions as herein authorized and provided.

(F) The Issuer is advised that due to the present volatility of the market, it is in the best interest of the Issuer to sell the Series 2020 Bond by a private negotiated sale, allowing the Issuer to enter such market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Issuer to obtain the best possible price, interest rate and other terms for the Series 2020 Bond; and, accordingly, the Issuer does hereby find and determine that it is in the best interest of the Issuer that a private negotiated sale of the Series 2020 Bond be authorized. The Lender has offered to purchase the Series 2020 Bond, and the Issuer does hereby find and determine that it is in the best financial interest of the Issuer to accept such an offer based upon the terms provided herein.

**Section 4:** Authorization of Refunding and Series 2020 Bond. The refunding of the Refunded Bonds is hereby authorized.

Subject and pursuant to the provisions of this Supplemental Resolution, an obligation of the Issuer to be known as "City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020" is hereby authorized to be issued under and secured by the Resolution, in the principal amount of not to exceed \$60,000,000 for the purpose of refunding the Refunded Bonds and paying the costs of issuing the Series 2020 Bond. The Series 2020 Bond constitutes an Additional Parity Obligation under the Bond Resolution. The Series 2020 Bond hereby authorized shall be executed and delivered by the appropriate officials of the Issuer only upon satisfaction of the requirements of Section 20(Q)(7) of the Bond Resolution relating to the issuance of Additional Parity Obligations as refunding bonds and the requirements of this Supplemental Resolution.

All of the covenants, rights and remedies contained in the Bond Resolution shall be applicable to the Series 2020 Bond in the same manner and to the same extent as they apply to the Parity Bonds; provided, however, the Series 2020 Bond shall not be secured by the Reserve Fund or any subaccount created therein. Because of the characteristics of the Series 2020 Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2020 Bond, it is in the best interest of the Issuer to accept the offer of the Lender to purchase the Series 2020 Bond at a private negotiated sale. Prior to the issuance of the Series 2020 Bond, the Issuer shall receive from the Lender a Lender's Certificate, the form of which is attached hereto as Exhibit B and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

**Section 5: Description of Series 2020 Bond.** The Series 2020 Bond shall be dated the date of its delivery, which shall be a date agreed upon by the Issuer and the Lender, subject to the following terms:

(A) **Interest Rate.** The Series 2020 Bond shall have a fixed interest rate not to exceed 2.25% (subject to adjustment as described in the Series 2020 Bond, the "Interest Rate"), calculated on the basis of a 360-day year, consisting of twelve 30-day months; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by law.

(B) **Principal and Interest Payment Dates.** Interest on the Series 2020 Bond shall be paid semi-annually, commencing October 1, 2020, and on each subsequent April 1 and October 1 thereafter until maturity.

Principal on the Series 2020 Bond shall be payable on October 1 of the years and in the amounts to be set forth in Series 2020 Bond; provided, however, the final maturity of the Series 2020 Bond shall be October 1, 2033.

(C) The Series 2020 Bond shall be subject to prepayment as provided in the Series 2020 Bond.

(D) The Series 2020 Bond is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman. The Series 2020 Bond shall be executed on behalf of the Issuer with the manual or facsimile signature of the Chairman and the official seal of the Issuer, and be attested and countersigned with the manual or facsimile signature of the City Clerk, to be approved as to form by the City Attorney. In case any one or more of the officers who shall have signed or sealed the Series 2020 Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Series 2020 Bond so signed and sealed has been actually sold and delivered, such Series 2020 Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2020 Bond had not ceased to hold such office. The Series 2020 Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Series 2020 Bond shall hold the proper office of the Issuer, although, at the date of such Series 2020 Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Supplemental Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Series 2020 Bond shall be actually sold and delivered.

**Section 6: Registration and Exchange of Series 2020 Bond; Persons Treated as Holder.** The Series 2020 Bond is initially registered to the Lender. So long as the Series 2020 Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2020

Bond. The Series 2020 Bond shall be transferable only upon such registration books. The Holder may not transfer the Series 2020 Bond while the Issuer continues to possess its one-time option to exchange the Series 2020 Bond for the Future Bond (as such term is defined in the Forward Delivery and Direct Purchase Agreement referenced in Section 15 hereof) upon compliance with the terms of such Forward Delivery and Direct Purchase Agreement. Thereafter, the Holder may make transfers of the Series 2020 Bond or sell participations to Permitted Lenders without the consent of the Issuer; provided, however, such transfers or participations shall not be for less than a \$1,000,000 denomination.

The person(s) in whose name the Series 2020 Bond shall be registered shall be deemed and regarded as the absolute Holder thereof for all purposes, and payment of principal and interest on such Series 2020 Bond shall be made only to or upon the written order of the Holder. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2020 Bond to the extent of the sum or sums so paid.

**Section 7:** Application of Proceeds of Series 2020 Bond and Approval of Escrow Deposit Agreement. At the time of delivery of the Series 2020 Bond herein authorized, proceeds from the sale of the Series 2020 Bond shall be applied by the Issuer simultaneously with the delivery of the Series 2020 Bond to the Lender, as follows:

(A) The Issuer shall pay all costs and expenses in connection with the preparation, issuance and sale of the Series 2020 Bond.

(B) A sum specified in the hereinafter defined Escrow Deposit Agreement that, together with other legally available funds of the Issuer and taking into account investments, if any, shall be sufficient to pay the principal of and interest and premium, if any, on the Refunded Bonds, shall be deposited with the Escrow Agent pursuant to the hereinafter defined Escrow Deposit Agreement and used in the manner described therein.

Simultaneously with the delivery of the Series 2020 Bond to the Lender, the Issuer shall enter into an escrow deposit agreement (the "Escrow Deposit Agreement") with Wells Fargo Bank, National Association (the "Escrow Agent"), which is hereby appointed as Escrow Agent with respect to the Refunded Bonds, which shall provide for the deposit of sums and, if applicable, for the investment of moneys in appropriate Acquired Obligations so as to produce sufficient funds to make all the payments described in the Escrow Deposit Agreement. The Escrow Deposit Agreement is to be in substantially the form set forth in Exhibit D attached hereto, together with such changes as shall be approved by the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman. The execution of the Escrow Deposit Agreement is hereby approved, and the execution of the Escrow Deposit Agreement by the Chairman is hereby authorized, to be attested by the City Clerk, the form and correctness of which to be approved by the City Attorney. At the time of execution of the Escrow Deposit Agreement, the Issuer shall furnish to the Escrow Agent appropriate documentation to demonstrate that the sums being deposited and the investments to be made will be sufficient for

such purposes.

Subject to the execution and delivery of the Series 2020 Bond for the purpose of refunding the Refunded Bonds, the Issuer hereby irrevocably calls the Refunded Bonds for early redemption on October 1, 2023, or such other date as determined by the Chairman in the Escrow Deposit Agreement. Not less than thirty (30) days prior to such redemption date, the Issuer hereby directs Wells Fargo Bank, National Association, in its capacity as Registrar for the Refunded Bonds, to mail a notice of the redemption of the Refunded Bonds to each holder thereof in accordance with the requirements of Section 14 of the Bond Resolution and to post such notice on the Electronic Municipal Market Access website ("EMMA") at the same time. Furthermore, upon issuance of the Series 2020 Bond for the purposes of refunding the Refunded Bonds, the Issuer hereby directs Wells Fargo Bank, National Association to mail a notice of defeasance to the Holder of the Refunded Bonds and to post such notice on EMMA at the same time.

On the date of issuance of the Series 2020 Bond, the Issuer shall transfer moneys on deposit in the funds and accounts created for the benefit of the Refunded Bonds as provided in the Escrow Deposit Agreement to the Escrow Agent to be held on behalf of the Issuer and to be used pursuant to the terms of the Escrow Deposit Agreement.

Robert Thomas CPA, LLC is hereby appointed as the Verification Agent to provide a verification report with respect to the Refunded Bonds.

(C) Any remaining moneys from the proceeds of the sale of the Series 2020 Bond shall be deposited as provided in a Supplemental Resolution of the Issuer, but shall only be used for the purposes permitted by law.

**Section 8:** *Series 2020 Bond Not Secured by Reserve Fund.* The Series 2020 Bond is not secured by the Reserve Fund or any subaccount created therein.

**Section 9:** *This Instrument to Constitute Contract.* Upon and in consideration of the acceptance of the Series 2020 Bond by the Lender, the Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the Holder of the Series 2020 Bond. The covenants and agreements set forth in the Resolution to be performed by the Issuer shall be for the equal and proportionate benefit, protection and security of the Holder of the Series 2020 Bond, the Parity Bonds and any Additional Parity Obligations issued pursuant to the Bond Resolution and the terms thereof shall be of equal rank, without preference, priority or distinction over any other thereof, except as expressly provided in the Bond Resolution.

**Section 10:** *Business Days.* In any case where the due date of interest on or principal of a Series 2020 Bond is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day in the amount due on such succeeding Business Day (provided however, such succeeding Business Day interest



amount will not be added to the next interest payment due), provided that credit for payments made shall not be given until the payment is actually received by the Holder.

**Section 11:** *Registrar and Paying Agent.* The City Clerk is hereby appointed as Registrar and Paying Agent under the Resolution, to serve as Registrar and Paying Agent for the Series 2020 Bond.

**Section 12:** *Financial Information; Other Covenants.* The Issuer shall provide the Holder of the Series 2020 Bond with such financial information regarding the Issuer as the Holder of the Series 2020 Bond may reasonably request. Not later than 210 days after the close of each Fiscal Year, the Issuer shall provide the Holder of the Series 2020 Bond with its Comprehensive Annual Financial Report including annual financial statements for such Fiscal Year of the Issuer, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. No later than the first day of each Fiscal Year, the Issuer shall provide the Holder of the Series 2020 Bond with its annual budget. Upon request, the Issuer shall provide such other financial information as the Holder may reasonably request.

In the event that Issuer shall grant a Holder of Parity Bonds with any rights to accelerate such Parity Bonds in the event of a default under the Bond Resolution (a "Favored Default Remedy"), such Favored Default Remedy shall be deemed to be incorporated herein and into the Series 2020 Bond. The Lender shall have no right to consent to the amendment of any provision of a Favored Default Remedy but the Issuer shall provide the Lender timely notice of such amendment. If requested by the Lender, the Issuer shall promptly enter into an amendment hereto expressly incorporating the applicable provisions of such amendment in such Favored Default Remedy herein.

**Section 13:** *Registration of Series 2020 Bond.* The person in whose name the Series 2020 Bond shall be registered shall be deemed and regarded as the absolute Holder thereof for all purposes, and payment of or on account of the principal on any such Series 2020 Bond, and the interest on such Series 2020 Bond, shall be made only to or upon the order of the registered Holder thereto or his designated legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2020 Bond, and interest thereon to the extent of the sum or sums so paid.

**Section 14:** *City Council Members of the Issuer Exempt from Personal Liability.* No recourse under or upon any obligation, covenant or agreement of this Supplemental Resolution or the Series 2020 Bond or for any claim based thereon or otherwise in respect thereof, shall be had against any City Council member of the Issuer, as such, of the Issuer, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council members of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Supplemental Resolution or implied therefrom, and (b) that any and all such personal liability,

either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such City Council member of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Supplemental Resolution and the issuance of the Series 2020 Bond, on the part of the Issuer.

**Section 15:** Authorization of Forward Delivery and Direct Purchase Agreement. The Chairman is hereby authorized to enter into a Forward Delivery and Direct Purchase Agreement, in the form attached hereto as Exhibit E, with such changes as may be approved by the Chairman, his or her approval to be presumed by the execution thereof, and hereby authorizes the issuance of the Future Bond, subject to the provisions of said agreement.

Notwithstanding anything herein or in the Series 2020 Bond to the contrary, by acceptance of the Series 2020 Bond, the Lender agrees that any purchase of the Future Bond in accordance with the terms of the Forward Delivery and Direct Purchase Agreement shall not constitute a prepayment of the Series 2020 Bond by the Issuer, and the Issuer will therefore not owe the Lender any penalty or premium, as a result thereof.

**Section 16:** Authorization of Execution of Other Certificates and Other Instruments. The Chairman, the City Clerk, the City Manager, the Finance Director and the City Attorney are hereby authorized and directed, either alone or jointly, under the official seal of the Issuer, to execute and deliver certificates of the Issuer certifying such facts as the City Attorney, counsel to the Lender or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2020 Bond, and to execute and deliver such other instruments as shall be necessary or desirable to perform the Issuer's obligations under the Resolution and to consummate the transactions contemplated hereby and thereby.

**Section 17:** Severability. If any one or more of the covenants, agreements or provisions of this Supplemental Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of the Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Series 2020 Bond issued under the Resolution.

**Section 18:** No Third Party Beneficiaries. Except as may be expressly described in the Resolution, nothing in the Resolution or in the Series 2020 Bond, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Holder of the Series 2020 Bond any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Series 2020 Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Holder of the Series 2020 Bond from time to time.

**Section 19:** Applicable Provisions of Law; Waiver of Jury Trial. This Supplemental Resolution shall be governed by and construed in accordance with the laws of the State of Florida. The Issuer and the Owner, by virtue of acceptance of the Series 2020 Bond, each consent to Florida jurisdiction and agree to waive trial by jury in any action arising under the Bond Resolution or this Supplemental Resolution or the Series 2020 Bond.

**Section 20:** Repealing Clause. All resolutions or parts or resolutions in conflict herewith are hereby repealed to the extent of such conflict.

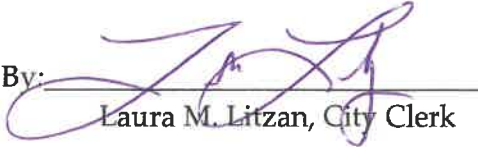
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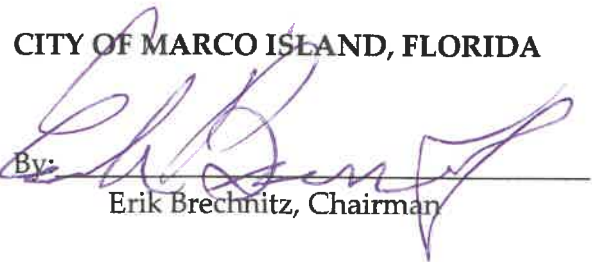
**Section 21:** Effective Date. This Supplemental Resolution shall take effect immediately upon its passage.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 20<sup>th</sup> day of March, 2020.

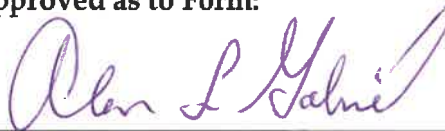
(SEAL)

**ATTEST**

By:   
Laura M. Litzan, City Clerk

**CITY OF MARCO ISLAND, FLORIDA**  
  
By: Erik Brechnitz, Chairman

**Approved as to Form:**

  
Alan L. Gabriel, City Attorney

RECORDED  
MAY 11 2020  
11:15 AM  
CITY OF MARCO ISLAND

**EXHIBIT A**

**FORM OF BOND**

March 27, 2020

\$ \_\_\_\_\_

**CITY OF MARCO ISLAND, FLORIDA  
TAXABLE UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2020**

Maturity Date: October 1, 2033

Interest Rate: \_\_\_\_%  
(subject to adjustment as described herein)

KNOW ALL MEN BY THESE PRESENTS that the City of Marco Island, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of PNC Bank, National Association, or registered assigns (hereinafter, the "Owner"), the principal sum of \$ \_\_\_\_\_ on the dates as hereinafter described, together with interest on the principal balance at the Interest Rate which is described above calculated on the basis of a 360-day year, consisting of twelve 30-day months; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The Interest Rate on this City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020 (this "Bond ") also may be adjusted as hereinafter provided. This Bond shall have a final maturity date of October 1, 2033 (the "Maturity Date").

THE INTEREST INCOME ON THIS BOND IS INCLUDABLE IN THE GROSS INCOME OF THE OWNER FOR FEDERAL INCOME TAX PURPOSES.

Principal of and interest on this Bond is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing.

Interest shall be payable to the Owner on each April 1 and October 1, commencing on October 1, 2020.

Principal on this Bond shall be payable on October 1 of the following years and in the following amounts:

<u>Year</u>	<u>Principal Amortization</u>
2020	
2021	
2022	
2023	

2024  
2025  
2026  
2027  
2028  
2029  
2030  
2031  
2032  
2033

A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date.

Upon at least five (5) Business Days prior written notice to the Owner, this Bond shall be subject to prepayment, in whole or in part, on any date at the option of the Issuer, at the Prepayment Price plus interest accrued on the amount being prepaid to the date of prepayment. Notwithstanding anything herein or in the Resolution to the contrary, by acceptance of this Bond, the Owner agrees that any purchase of the Future Bond in accordance with the terms of the Forward Delivery and Direct Purchase Agreement (as such term is defined in the Resolution) shall not constitute a prepayment of this Bond by the Issuer, and the Issuer will therefore not owe the Owner any penalty or premium, as a result thereof.

"Prepayment Price" means the principal amount of this Bond being prepaid plus an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the Applicable Interest Period, of a U.S. Treasury obligation with a maturity the same or substantially similar to the Applicable Interest Period minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity the same or substantially similar to the remaining maturity of the Applicable Interest Period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the Applicable Interest Period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15(519) "Selected Interest Rates." For purposes of making present value calculations, the yield, on the beginning date of the Applicable Interest Period, of a U.S. Treasury obligation with a maturity the same or substantially similar to the Applicable Interest Period shall be deemed the discount rate. For purposes of determining the Prepayment Price, a separate calculation shall be made with respect to each principal payment date (and the final maturity date) with respect the portion of this Bond prepaid, using the Applicable Interest Period, and the sum of such calculations shall be the Prepayment Price.

"Applicable Interest Period" means the period from the date of issuance of this Bond to the final maturity date of this Bond.

Any prepaid amount on this Bond shall be applied in the inverse chronological order of the principal amortization.

"Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of the Owner. The Prime Rate is a reference rate for the information and use of the Owner in establishing the actual rate to be charged to the Issuer. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

Upon and during the continuance of an Event of Default, this Bond shall bear interest at the Default Rate. For purposes of this Bond, the term "Default Rate" shall mean the lesser of (i) 3% per annum in excess of the Prime Rate, or (ii) the maximum interest rate permitted by applicable law. The Default Rate shall be determined as of the date on which any amount payable to the Owner hereunder is not paid when due.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day (as defined in the Resolution hereinafter defined) the payment due on such date shall be due on the next succeeding day which is a Business Day in the amount due on such succeeding Business Day (provided however, such succeeding Business Day interest amount will not be added to the next interest payment due), but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Bond shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

THIS BOND DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE OWNER OF THIS BOND THAT SUCH OWNER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OR THE USE OF AD VALOREM TAX REVENUES OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Bond is issued pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as from time to time may be amended or supplemented, and as particularly amended by Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and as particularly supplemented by Resolution No. 20-\_\_ adopted by the City Council of the Issuer on March 20, 2020 (collectively, the "Resolution"), and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution including, without limitation, remedies in the Event of Default are by this reference

thereto incorporated herein as a part of this Bond. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

This Bond is payable solely from and secured by a pledge of the Pledged Revenues in the manner and to the extent provided in the Resolution, on parity with the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, the City of Marco Island, Florida Tax-Exempt Utility System Improvement and Refunding Revenue Bonds, Series 2010A, the City of Marco Island, Florida Tax-Exempt Utility System Refunding Revenue Bond, Series 2011, the City of Marco Island, Florida Utility System Refunding Revenue Bonds, Series 2013 not refunded with through the issuance of this Bond and the City of Marco Island, Florida Utility System Refunding Revenue Bonds, Series 2016; provided, however, this Bond is not secured by the Reserve Fund or any subaccount created therein. Reference is made to the Resolution for more complete definition and description of the Pledged Revenues.

The Issuer has covenanted, in the Resolution, to fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals, and other charges for the use of the products, services, and facilities of the System which will always provide,

(i) Net Revenues in each Fiscal Year sufficient to pay one hundred ten percent (110%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, or

(ii) Net Revenues in each Fiscal Year sufficient to pay one hundred five percent (105%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year; and Net Revenues, Water System Capital Facilities Fees and Sewer System Capital Facilities Fees in each Fiscal Year sufficient to pay at least one hundred twenty percent (120%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year.

In addition to compliance with either subparagraph (i) or (ii) above, such Net Revenues in each Fiscal Year shall also be sufficient to provide one hundred percent (100%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year, any amounts required by the terms of the Resolution to be deposited into the Reserve Fund or with any Credit Facility Issuer as a result of a withdrawal from the Reserve Fund, the Renewal, Replacement and Improvement Fund and debt service on other obligations payable from the Revenues of the System, and other payments, and all allocations and applications of revenues herein required in such Fiscal Year.

Net Revenues will not be reduced so as to render them insufficient to provide revenues for the purposes provided therefor by the Resolution. Nothing in the Resolution will obligate the Issuer to impose Sewer System Capital Facilities Fees or Water System Capital Facilities Fees.



The Issuer has entered into certain further covenants with the Owner of this Bond for the terms of which reference is made to the Resolution.

This Bond may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, said City of Marco Island, Florida, by resolution duly adopted by its City Council, has caused this Bond to bear the signatures of its Chairman, to be attested and countersigned by the signature of its City Clerk, to be approved as to form by the City Attorney, and a facsimile of the official seal of the City to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of the 27<sup>th</sup> day of March, 2020.

(SEAL)

CITY OF MARCO ISLAND, FLORIDA

By: \_\_\_\_\_  
Name: Erik Brechnitz  
Title: Chairman of the City Council

ATTESTED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Name: Laura M. Litzan  
Title: City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Alan L. Gabriel  
Title: City Attorney

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within mentioned Resolution.

Date of Authentication:

\_\_\_\_\_

CITY OF MARCO ISLAND, FLORIDA  
Registrar, as Authenticating Agent

By: \_\_\_\_\_  
City Clerk

ASSIGNMENT AND TRANSFER

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_(Please insert Social Security or other identifying number of transferee) \_\_\_\_\_  
\_\_\_\_\_ the attached bond of the City of Marco Island, Florida, and does hereby  
constitute and appoint, \_\_\_\_\_, attorney, to transfer the said Bond on the  
books kept for Registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed by \_\_\_\_\_  
[member firm of the New York Stock  
Exchange or a commercial bank or a trust  
company.]

By: \_\_\_\_\_ (manual or facsimile)  
Authorized Officer

NOTICE: No transfer will be registered and no new Bonds will be issued in the name of the transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the transferee is supplied.

## **EXHIBIT B**

### **FORM OF LENDER'S CERTIFICATE**

This is to certify PNC Bank, National Association (the "Lender") has not required the City of Marco Island, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of \$\_\_\_\_\_ City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020 dated March 27, 2020 (the "Bond"). The Lender acknowledges that the loan evidenced by the Bond (the "Loan") is being made as a direct loan. Any capitalized terms not otherwise defined herein shall have the meanings set forth in Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as amended and supplemented, and as particularly amended by Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and particularly as supplemented by a resolution adopted by the City Council of the Issuer on March 20, 2020 authorizing the issuance of the Bond (collectively, the "Resolution").

We are aware that investment in the Loan involves various risks and that the Bond is not a general obligation of the Issuer or payable from ad valorem tax revenues, and that the repayment of the Loan is secured solely from the sources described in the Resolution (the "Loan Security").

We are a sophisticated investor and have made such independent investigation of the Loan Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. We have been provided access to and have reviewed all information about the Issuer we deemed necessary and are not relying on any other disclosures from the Issuer. In making our lending decision, we have relied upon the accuracy of information which has been provided to us by the Issuer and PFM Financial Advisors LLC, the Issuer's financial advisor (the "Financial Advisor").

We acknowledge that the Financial Advisor is not acting as a placement agent. Documentation for the Loan will be provided by Bryant Miller Olive P.A., the Issuer's Bond Counsel (the "Bond Counsel").

We are a qualified institutional investor having knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of lending funds to the Issuer.

The Lender has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the Loan and no inference should be drawn that the Lender, in the acceptance of the Bond, is relying on the Bond Counsel or Weiss Serota Helfman Cole &

Bierman, P.L., the City Attorney, as to any such matters other than the legal opinion rendered by such parties.

We acknowledge and understand that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and the Bond is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor the City Attorney shall have any obligation to effect any such registration or qualification.

We acknowledge that no CUSIP numbers or credit ratings have been obtained with respect to the Bond. We further acknowledge that we are making the Loan for our own account, we do not currently intend to syndicate the Loan, we will not knowingly take any action to cause the Bond to be characterized as a security, we will not treat the Loan as a municipal security for purposes of the securities law and the Loan will not be used in the future on a securitized transaction.

We understand that the Loan is evidenced by the Bond and the Bond is issued in a single denomination equal to the principal amount of the Loan and may only be transferred in accordance with the limitations set forth in the Resolution.

We are not acting as a broker or other intermediary and are funding the Loan with our own capital and for our own account and not with a present view to a resale or other distribution to the public. We are a bank as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Bond for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an "accredited investor" as such term is defined in the Securities Act of 1933, as amended, and Regulation D thereunder.

This Certificate is furnished by us as Lender based solely on our knowledge on the day hereof and is solely for the benefit of the Issuer and may not be relied upon by, or published or communicated to, any other person without our express written consent. We disclaim any obligation to supplement this letter to reflect any facts or circumstances that may hereafter come to our attention.

DATED this 27<sup>th</sup> day of March, 2020.

**PNC BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: Nick Ayotte

Title: Vice President, Public Finance

## EXHIBIT C

### FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of Marco Island, Florida (the "Issuer") for the private purchase of its City of Marco Island, Florida Taxable Utility System Refunding Revenue Bond, Series 2020 (the "Bond") in the principal amount of \$\_\_\_\_\_. Prior to the award of the Bond, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Bond (such fees and expenses to be paid by the Issuer):

Akerman LLP  
Bank Counsel Fees \$9,000

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Bond to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Bank, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bond.

3. The amount of the underwriting spread expected to be realized by the Bank is \$0.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Bond is being issued primarily for the purpose of refunding the Refunded Bonds for net present value debt service savings.

Unless earlier redeemed, the Bond is expected to be repaid over a period \_\_ years; at an initial fixed interest rate of \_\_%, total interest paid over the life of the Bond is estimated to be \$\_\_\_\_\_.

The Bond will be payable solely from Pledged Revenues sufficient to make such payments, appropriated and deposited as described in Resolution No. 03-55 adopted by the City Council of the Issuer on September 29, 2003, as amended and supplemented, and as particularly amended by Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and particularly as supplemented by a resolution adopted by the City Council of the Issuer on March 20, 2020 authorizing the issuance of the Bond (collectively, the "Resolution"), in the manner as to the extent required in the Resolution. See the Resolution for a definition of Pledged Revenues and any other capitalized terms not otherwise defined herein. Issuance of the Bond is estimated to result in an annual average of approximately \$ \_\_\_\_\_ of revenues of the Issuer not being available to finance the other services of the Issuer each year for \_\_\_ years. This paragraph is provided pursuant to Section 218.385, Florida Statutes.

6. The name and address of the Bank is as follows:

PNC Bank, National Association  
16740 San Carlos Boulevard,  
Fort Myers, Florida 33908

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 27<sup>th</sup> day of March, 2020.

**PNC BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: Nick Ayotte

Title: Vice President, Public Finance

**EXHIBIT D**

**ESCROW DEPOSIT AGREEMENT**



**EXHIBIT E**

**FORWARD DELIVERY AND DIRECT PURCHASE AGREEMENT**

