

RESOLUTION 23-25

A RESOLUTION SUPPLEMENTING RESOLUTION 03-55, AS AMENDED, OF THE CITY OF MARCO ISLAND, FLORIDA; AUTHORIZING ISSUANCE OF THE NOT TO EXCEED \$56,880,000 CITY OF MARCO ISLAND, FLORIDA UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2023, IN EXCHANGE FOR AND TO REFUND ALL OR A PORTION OF THE CITY'S OUTSTANDING TAXABLE UTILITY SYSTEM REFUNDING REVENUE BOND, SERIES 2020; APPROVING A PAYMENT IN AN AMOUNT NOT TO EXCEED \$5,000,000 FROM LEGALLY AVAILABLE REVENUES OF THE CITY TO PREPAY A PORTION OF THE SERIES 2020 BOND; PLEDGING THE PLEDGED REVENUES FOR THE PAYMENT OF SUCH SERIES 2023 BOND ON PARITY WITH CERTAIN EXISTING CITY INDEBTEDNESS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of the City of Marco Island, Florida (the "Issuer") adopted Resolution 03-55 on September 29, 2003; and

WHEREAS, the City Council of the Issuer adopted Resolution 05-71 on October 17, 2005 (together with any Supplemental Resolutions, the "Bond Resolution") to amend certain provisions thereof; and

WHEREAS, pursuant to the Bond Resolution, the Issuer previously issued its Taxable Utility System Refunding Revenue Bond, Series 2020 (the "Series 2020 Bond"); and

WHEREAS, on March 27, 2020, the Issuer entered into that certain Forward Delivery and Direct Purchase Agreement between the Issuer and PNC Bank, National Association (the "Lender"), the Holder of the Series 2020 Bond (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, the Issuer has the option (not the obligation) to refund and exchange the Series 2020 Bond for the tax-exempt Utility System Refunding Revenue Bond, Series 2023 (the "Series 2023 Bond") to realize net present value debt service savings; and

WHEREAS, the Issuer now desires to supplement the Bond Resolution by adopting this Supplemental Resolution and irrevocably exercise its option to exchange the Series 2020 Bond for the Series 2023 Bond on October 2, 2023, or such other date mutually agreed upon by the Issuer and the Lender; and

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

WHEREAS, for state law and federal tax purposes, such exchange of the Series 2020 Bond for the Series 2023 Bond shall constitute a current refunding of the Series 2020 Bond; and

WHEREAS, as provided in the Purchase Agreement, the Issuer does not owe any penalty or premium to the Lender as a result of the exchange of the Series 2020 Bond for the Series 2023 Bond, and such exchange does not constitute a prepayment of the Series 2020 Bond and therefore will not result in any make whole prepayment penalty or premium; and

WHEREAS, on the date of, or prior to the issuance of the Series 2023 Bond, the Issuer intends to apply legally available funds to prepay a portion of the Series 2020 Bond; and

WHEREAS, the Series 2023 Bond will be issued as an Additional Parity Obligation pursuant to the Bond Resolution on parity with the Issuer's Outstanding Series 2006 Bond, Series 2013 Bonds and Series 2016 Bonds (collectively, the "Parity Bonds") and any Additional Parity Obligations issued in the future; and

WHEREAS, the Series 2020 Bond and the Parity Bonds are the only Bonds currently Outstanding under the Bond Resolution; and

WHEREAS, the Series 2023 Bond shall be secured by the Pledged Revenues on parity and with an equal lien as to the Parity Bonds and any Additional Parity Obligations issued in the future; 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 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 2023 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 2023 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 hereby determines 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 (i) the issuance of the Series 2023 Bond to realize net present value debt service savings, and (ii) a payment from legally available funds of the Issuer for purposes of prepaying a portion of the Series 2020 Bond, and this resolution shall constitute a Supplemental Resolution for purposes of the Bond Resolution and the Purchase Agreement.

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 and the Purchase Agreement. 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.

"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.

"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 Series 2020 Bond to achieve net present value debt service savings. Issuance of the Series 2023 Bond to refund the Series 2020 Bond satisfies a public purpose.

(B) The principal of and interest on the Series 2023 Bond, the Parity Bonds and any other Additional Parity Obligations hereafter issued, and all required Debt Service Fund and other payments shall be payable solely from the Net Revenues as more particularly described in the Bond Resolution. The Issuer shall never be required to levy ad valorem taxes on any real property therein to pay the principal of and interest on the Series 2023 Bond, the Parity Bonds and any other Additional Parity Obligations hereafter issued, or to make any other payments specified herein. The Series 2023 Bond, the Parity Bonds and any other Additional Parity Obligations hereafter issued, shall not constitute a lien upon any property owned by or located within the boundaries of the Issuer other than the Net Revenues.

(C) The estimated Net Revenues will be sufficient to pay all principal of and interest on the Series 2023 Bond and the Parity Bonds, as the same become due, and to make all required Debt Service Fund deposits, reserve or other payments required by the Bond Resolution.

(D) The Issuer is not in default in the carrying out of any of the obligations assumed under the Bond Resolution or the Purchase Agreement, and all payments required by the Bond Resolution to be made into the funds and accounts established thereunder have been made to the full extent required.

Section 4. Authorization of Refunding/Exchange And Additional Payment from Legally Available Revenues. Subject and pursuant to the provisions of the Bond Resolution and the Purchase Agreement, an obligation of the Issuer to be known as the "Tax-Exempt Utility Refunding Revenue Bond, Series 2023," herein defined as the "Series 2023 Bond," is authorized to be issued in the original principal amount of not to exceed \$56,880,000 for the purpose of refunding all or a portion of the Series 2020 Bond. Costs of issuance of the Series 2023 Bond shall be payable from legally available funds of the Issuer. In accordance with the Purchase Agreement, the Issuer hereby irrevocably exercises its option to exchange the Series 2020 Bond for the Series 2023 Bond on October 2, 2023 or such other date mutually agreed upon by the Issuer and the Lender. The Series 2023 Bond shall constitute the "Future Bond" contemplated by the Purchase Agreement.

The City Council hereby authorizes payment in an amount of not to exceed \$5,000,000, from legally available revenues of the Issuer, to prepay the remaining portion of the Series 2020 Bond not being refunded with proceeds of the Series 2023 Bond.

All of the covenants, rights and remedies contained in the Bond Resolution shall be applicable to the Series 2023 Bond in the same manner and to the same extent as they apply to the Parity Bonds; provided, however, the Series 2023 Bond shall not be secured by the Reserve Fund or any subaccount created therein.

Section 5: Description of Series 2023 Bond. The Series 2023 Bond shall be dated the date of its delivery, which date shall constitute the "Future Bond Closing Date" contemplated by the Purchase Agreement, subject to the terms of the Purchase

Agreement The City Clerk is hereby authorized and directed to authenticate the Series 2023 Bond.

Section 6: Registration and Exchange of Series 2023 Bond; Persons Treated as Holder. The Series 2023 Bond is initially registered to the Lender. So long as the Series 2023 Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2023 Bond. The Series 2023 Bond shall be transferable only upon such registration books. The Holder may make transfers of the Series 2023 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 2023 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 2023 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 2023 Bond to the extent of the sum or sums so paid.

Section 7: Closing Conditions. The Issuer shall comply with the closing conditions in the Purchase Agreement as a condition for closing on the exchange of the Series 2020 Bond for the Series 2023 Bond.

Section 8: Series 2023 Bond Not Secured by Reserve Fund. The Series 2023 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 2023 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 2023 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 2023 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 2023 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 2023 Bond.

Section 12: Refunding, Mandatory Tender and Exchange. The Series 2020 Bond shall be refunded by the Series 2023 Bond. The Series 2020 Bond shall be subject to mandatory tender and will be exchanged for the Series 2023 Bond

Section 13: Registration of Series 2023 Bond. The person in whose name the Series 2023 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 2023 Bond, and the interest on such Series 2023 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 2023 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 2023 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 2023 Bond, on the part of the Issuer.

Section 15: Tax and Other Covenants of the Issuer.

A. The Issuer covenants to the Holder of the Series 2023 Bond that the Issuer will not make any use of the proceeds of the Series 2023 Bond at any time during the term of the Series 2023 Bond which would cause the Series 2023 Bond to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Series 2023 Bond from the gross income of the Holder of the Series 2023 Bond thereof for purposes of federal income taxation.

B. All covenants of the Issuer set forth in the Bond Resolution for the benefit of the Holder of the Series 2020 Bond and reaffirmed and shall apply equally to the Holder of the Series 2023 Bond. All covenants of the Issuer set forth in the Bond Resolution are reaffirmed and apply equally to the Series 2023 Bond, the Parity Bonds and any other Additional Parity Obligations hereafter issued. While Outstanding, the Series 2023 Bond, the Parity Bonds and any Additional Parity Obligations issued in the future shall all be of equal rank and without preference, priority or distinction of any Bond over any other thereof, except as expressly provided herein.

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 exchange of the Series 2020 Bond for the Series 2023 Bond, and to execute and deliver such other instruments as required by the Purchase Agreement or which shall be necessary or desirable to effectuate exchange of the Series 2020 Bond for the Series 2023 Bond and 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 2023 Bond issued hereunder.

Section 18: No Third Party Beneficiaries. Except as may be expressly described in the Bond Resolution or this Supplemental Resolution, nothing therein or in the Series 2023 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 2023 Bond any right, remedy or claim, legal or equitable, under and by reason of the Bond Resolution or this Supplemental Resolution or any provision thereof, or of the Series 2023 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 2023 Bond from time to time.

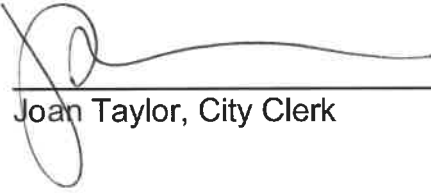
Section 19: Applicable Provisions of Law; Waiver of Jury Trial. This Supplemental Resolution shall be governed by and construed in accordance with the laws of the State of Florida. The Issuer and the Owner, by virtue of acceptance of the Series 2023 Bond, each consent to Florida jurisdiction and agree to waive trial by jury in any action arising under the Bond Resolution or this Supplemental Resolution or the Series 2023 Bond.

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

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

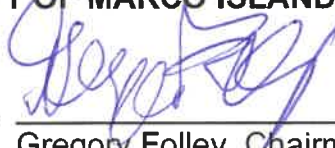
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 19th day of June, 2023.

ATTEST:



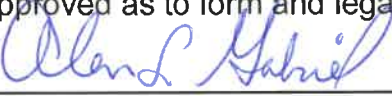
Joan Taylor, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Gregory Folley, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

