

RESOLUTION NO. 08-10

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$7,500,000 UTILITY SYSTEM REVENUE BOND, SERIES 2008, TO FINANCE THE COST OF CONSTRUCTING AND ACQUIRING CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM; PLEDGING THE PLEDGED REVENUES OF THE SYSTEM OF THE CITY FOR THE PAYMENT OF SUCH BOND; AUTHORIZING A NEGOTIATED SALE OF THE BOND BASED ON THE TERMS DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

**Section 1: *Definitions.*** The terms used in this Resolution shall have the respective meanings assigned to them in the hereinafter defined Resolution and in this Section, unless the text hereof clearly otherwise requires:

"Bond Counsel" shall mean Bryant Miller Olive P.A., Tampa, Florida, bond counsel with respect to the issuance of the Series 2008 Bond.

"Business Day" shall mean any day except any Saturday or Sunday or day on which the principal office of the Purchaser is closed.

"Chairman" shall mean the Chairman or Vice Chairman of the City Council of the City.

"City" or "Issuer" shall mean the City of Marco Island, Florida.

"City Attorney" shall mean the City Attorney of the City, or any assistant or deputy City Attorney of the City.

"City Clerk" shall mean the City Clerk of the City, or any assistant or deputy City Clerk of the City.

"City Council" shall mean the City Council of the City.

"City Manager" shall mean the City Manager of the City, or any assistant or deputy City Manager of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Finance Director" shall mean the Finance Director of the Issuer, or such other person as may be duly authorized by the City Manager of the Issuer to act on his or her behalf.

"Financial Advisor" shall mean Fifth Third Securities, Inc., or any other financial advisor appointed from time to time by the Issuer.

"Holder" or "Bondholder" or any similar term shall mean any persons who shall be the registered owner of any outstanding Bond.

"Parity Bonds" shall mean the City of Marco Island, Florida Utility System Revenue Bonds, Series 2003, issued in the original aggregate principal amount of \$101,115,000 and the City of Marco Island, Florida Utility System Revenue Bond, Series 2006, issued in the original aggregate principal amount of \$5,500,000.

"2008 Project" shall mean the Project authorized to be financed with the proceeds of the Series 2008 Bond, consisting of additions, extensions, supplements and replacements of the System as more particularly described in the plans and specifications on file with the Issuer.

"Principal Office" means, with respect to the Original Purchaser, the office located at Branch Banking and Trust Company, Governmental Finance, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, or such other office as the holder may designate in writing to the City.

"Purchaser" shall mean Branch Banking and Trust Company, the purchaser of the Bond.

"Resolution" shall mean 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 by Supplemental Resolution, in accordance with the terms thereof, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the Issuer on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005.

"Series 2008 Bond" shall mean the Issuer's Utility System Revenue Bond, Series 2008, authorized pursuant to Section 6 hereof.

**Section 2:** *Authority for This Resolution.* This Resolution is adopted pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer, and other applicable provisions of law (collectively, the "Act").

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

(A) For the benefit of its inhabitants, the Issuer presently owns, operates and maintains the System for the supply and distribution of water and for the collection, treatment and disposal of sewage, including residential reuse.

(B) It is in the best interests of the Issuer and the residents thereof that the Issuer authorize the issuance of the Series 2008 Bond for the purpose of designing, permitting, acquiring and constructing the 2008 Project.

(C) 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 2008 Bond; provided, however, the Series 2008 Bond shall not be secured by the Reserve Fund.

(D) 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 2008 Bond and the Parity Bonds, as the same become due, and all other payments provided for in the Resolution.

(E) The principal of and interest on the Series 2008 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 2008 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 2008 Bond or to make any other payments provided for in the Resolution, and the Series 2008 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.

(F) It is necessary, appropriate and in accordance with Section 20(Q) of the Resolution that the City Council adopt this Resolution at this time in order to authorize the issuance of the Series 2008 Bond heretofore stated based on the terms and conditions as herein authorized and provided.

(G) The Issuer is advised that due to the present volatility of the market for tax-exempt public obligations such as the Series 2008 Bond, it is in the best interest of the Issuer to sell the Series 2008 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 2008 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 2008 Bond be authorized. The Purchaser has offered to purchase the Series 2008 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 Design, Permitting, Acquisition and Construction of the 2008 Project. There is hereby authorized the design, permitting, acquisition and construction of the 2008 Project.

**Section 5:** Authorization and Description of Series 2008 Bond. Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as City of Marco Island, Florida Utility System Revenue Bond, Series 2008 is hereby authorized to be issued under and secured by the Resolution, in the principal amount of not to exceed \$7,500,000 for the purpose of providing funds to reimburse and pay the costs of the 2008 Project, capitalizing interest through and including October 1, 2009, and paying the costs of issuing the Series 2008 Bond.

All of the covenants contained in the Resolution shall be applicable to such Additional Parity Obligations in the same manner and to the same extent as they apply to the Parity Bonds; provided, however, the Series 2008 Bond shall not be secured by the Reserve Fund. Because of the characteristics of the Series 2008 Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2008 Bond, it is in the best interest of the Issuer to accept the offer of the Purchaser to purchase the Series 2008 Bond at a private negotiated sale. Prior to the issuance of the Series 2008 Bond, the Issuer shall receive from the Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

**Section 6:** Description of Series 2008 Bond. The Series 2008 Bond shall be dated the date of its delivery, which shall be a date agreed upon by the Issuer and the Purchaser, subject to the following terms:

(A) Interest Rate. The Series 2008 Bond shall have a fixed interest rate equal to 4.01% (subject to adjustment as described below, the "Interest Rate"), calculated on an actual/360 day basis; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by the Act.

(B) Adjustments of Interest Rate. If any interest on the Series 2008 Bond becomes includable in the gross income of the Holder for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Holder's after-tax yield with respect to the Series 2008 Bond, then the Holder shall have the right to adjust the Interest Rate in order to maintain the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of the Series 2008 Bond until such time as the federal statute of limitations under which the interest on the Series 2008 Bond could be declared taxable under the Code shall have expired. For so long as this Series 2008 Bond is owned by the Holder, the Interest Rate set forth above assumes a

maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Series 2008 Bond is owned by the Holder, or its successors and assigns, the Holder shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

(C) Principal and Interest Payment Dates. Interest on the Series 2008 Bond shall be paid semi-annually, commencing October 1, 2008, and on each subsequent April 1 and October 1 thereafter until maturity.

Principal on the Series 2008 Bond shall amortize on October 1 of the years and in the amounts to be set forth in Series 2008 Bond, commencing on October 1, 2010; provided, however, the final maturity of the Series 2008 Bond shall be October 1, 2025.

(D) The Series 2008 Bond shall be subject to prepayment prior to maturity at the option of the Issuer as provided in the Series 2008 Bond.

(E) The Series 2008 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 2008 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 2008 Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Series 2008 Bond so signed and sealed has been actually sold and delivered, such Series 2008 Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2008 Bond had not ceased to hold such office. The Series 2008 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 2008 Bond shall hold the proper office of the Issuer, although, at the date of such Series 2008 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 Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Series 2008 Bond shall be actually sold and delivered.

**Section 7: Registration and Exchange of Series 2008 Bond; Persons Treated as Holder.** The Series 2008 Bond is initially registered to the Purchaser. So long as the Series 2008 Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2008 Bond. The Series 2008 Bond shall be transferable only upon such registration books. Notwithstanding anything herein to the contrary, the Series 2008 Bond may not be transferred in a denomination less than \$100,000 under any circumstances.

The person in whose name the Series 2008 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 2008 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 2008 Bond to the extent of the sum or sums so paid.

**Section 8:** Application of Proceeds of Series 2008 Bond. At the time of delivery of the Series 2008 Bond herein authorized, proceeds from the sale of the Series 2008 Bond shall be used to reimburse and fund the 2008 Project, capitalized interest through and including October 1, 2009, and associated costs of issuance (including but not limited to legal and financial advisory fees and expenses) in accordance with the provisions in the next paragraph.

The Issuer hereby covenants that it will establish the Series 2008 Account in the Project Fund to be known as the "Series 2008 Account".

Proceeds from the sale of the Series 2008 Bond herein authorized shall be deposited into the Series 2008 Account and shall be used as described above. When the construction of the 2008 Project has been completed and all construction costs have been paid in full, all funds remaining in the Series 2008 Account shall first be used to redeem the outstanding balance of the Series 2008 Bond corresponding to the 2008 Project.

**Section 9:** Series 2008 Bond Not Secured by Reserve Fund. The Series 2008 Bond is not secured by the Reserve Fund.

**Section 10:** This Instrument to Constitute Contract. Upon and in consideration of the acceptance of the Series 2008 Bond by the Purchaser, this Resolution, together with the Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the 2008 Bondholder. 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 2008 Bond, the Parity Bonds and any Additional Parity Obligations issued pursuant to the 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 Resolution.

**Section 11:** Tax Covenant. The Issuer covenants to the purchasers of the Series 2008 Bond provided for in this Resolution that the Issuer will not make any use of the proceeds of the Series 2008 Bond at any time during the term of the Series 2008 Bond which, if such use had been reasonably expected on the date the Series 2008 Bond was issued, would have caused such Series 2008 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 2008 Bond from the gross income of the Holders thereof for purposes of federal income taxation.

**Section 12:** Business Days. In any case where the due date of interest on or principal of a Series 2008 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, provided that credit for payments made shall not be given until the payment is actually received by the Holder.

**Section 13:** 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 2008 Bond.

**Section 14:** Financial Information. The Issuer shall provide the Bondholder with such financial information regarding the Issuer as the Bondholder may reasonably request. The Issuer hereby covenants that it shall promptly give written notice to the Bondholder of any litigation or proceeding which if determined adversely to the Issuer would adversely affect the security for the payment of the Series 2008 Bond. Not later than 270 days after the close of each Fiscal Year, the Issuer shall provide the Bondholder with its Comprehensive Annual Financial Report including annual financial statements for each Fiscal Year of the Issuer, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. All accounting terms not specifically defined or specified herein shall have the meanings attributed to such terms under generally accepted accounting principals as in effect from time to time consistently applied.

**Section 15:** Registration of Series 2008 Bond. The person in whose name the Series 2008 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 2008 Bond, and the interest on such Series 2008 Bond, shall be made only to or upon the order of the registered Holder thereto or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2008 Bond, and interest thereon to the extent of the sum or sums so paid.

**Section 16:** City Council Members of the Issuer Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Series 2008 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 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 Resolution and the issuance of the Series 2008 Bond, on the part of the Issuer.

**Section 17:** *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 Purchaser or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2008 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 18:** *Severability.* If any one or more of the covenants, agreements or provisions of this 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 2008 Bond issued under the Resolution.

**Section 19:** *No Third Party Beneficiaries.* Except as may be expressly described in the Resolution, nothing in the Resolution or in the Series 2008 Bond, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Series 2008 Bondholder any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Series 2008 Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Series 2008 Bondholder from time to time.

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

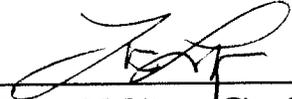
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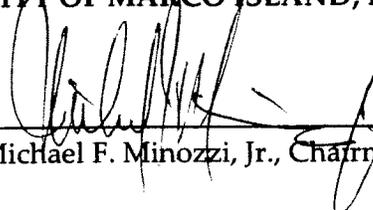
**Section 21:** Effective Date. This Resolution shall take effect immediately upon its passage.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 3<sup>rd</sup> day of March, 2008.

**ATTEST**

**CITY OF MARCO ISLAND, FLORIDA**

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

  
\_\_\_\_\_  
Michael F. Minozzi, Jr., Chairman

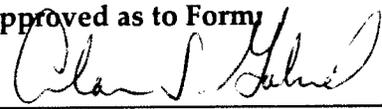
**Approved as to Form**  
  
\_\_\_\_\_  
Alan L. Gabriel, City Attorney

EXHIBIT A

**FORM OF BOND**

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

March 7, 2008

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

CITY OF MARCO ISLAND, FLORIDA  
UTILITY SYSTEM REVENUE BOND, SERIES 2008

Maturity Date: October 1, 2025

Interest Rate: 4.01%  
(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 BRANCH BANKING AND TRUST COMPANY, 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 an actual/360 day year; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The Interest Rate on this Bond also may be adjusted as hereinafter provided. This Bond shall have a final maturity date of October 1, 2025 (the "Maturity Date").

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.

If any interest on this Bond becomes includable in the gross income of the Owner for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Owner's after-tax yield with respect to this Bond, then the Owner shall have the right to adjust the Interest Rate with the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of this Bond until such time as the federal statute of limitations under which the interest on this Bond could be declared taxable under the Internal Revenue Code of 1986, as amended, shall have expired. For so long as this Bond is owned by the Owner, the Interest Rate set forth above assumes a maximum corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, so long as this Bond is owned by the Owner, or its successors and

assigns, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

Interest shall be payable to the Owner on each April 1 and October 1, commencing on October 1, 2008.

Principal on this Bond shall amortize on October 1 of the following years:

<u>Year</u>	<u>Principal Amortization</u>
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	

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.

The principal of and interest on this Bond may be prepaid at the option of the Issuer in whole or in part, upon prior written notice of three (3) days, on any scheduled interest payment date, without penalty.

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, 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 BONDHOLDER 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. 04-06 adopted by the City Council of the Issuer on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the Issuer on October 17, 2005, and as particularly supplemented by Resolution No. 08-\_\_ adopted by the City Council of the Issuer on March 3, 2008 (herein referred to as 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 Bonds, Series 2003 and the City of Marco Island, Florida Utility System Revenue Bond, Series 2006; provided, however, this Bond is not secured by the Reserve Fund. 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 hereof 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, the City of Marco Island, Florida has caused this Bond to be executed in its name by the manual signature of its Chairman, attested and countersigned by the manual signature of its City Clerk and approved as to form by the manual signature of the City Attorney, and its seal to be impressed hereon, all as of this 7<sup>th</sup> day of March, 2008.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

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

Laura M. Litzan, City Clerk

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

Michael F. Minozzi, Jr.,  
Chairman, City Council

APPROVED AS TO FORM:

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

Alan L. Gabriel, City Attorney

## EXHIBIT B

### FORM OF PURCHASER'S CERTIFICATE

This is to certify that Branch Banking and Trust Company (the "Purchaser") 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 the \$\_\_\_\_\_ City of Marco Island, Florida Utility System Revenue Bond, Series 2008 (the "Bond"), and no inference should be drawn that the Purchaser, in the acceptance of said Bond, is relying on Bond Counsel or Issuer's Counsel as to any such matters other than the legal opinion rendered by Bond Counsel, Bryant Miller Olive P.A., and by Issuer's Counsel, Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the resolution adopted by the City Council of the Issuer on March 3, 2008 authorizing the issuance of the Bond (the "Resolution").

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

We have made such independent investigation of the Bond Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the Issuer.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Bond and can bear the economic risk of our investment in the Bond.

We acknowledge and understand that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and 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 Issuer's Counsel shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Bond as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Bond may not be transferred in a denomination less than \$100,000 in any circumstances.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer 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 a "state bank" under the laws of the State of North Carolina.

DATED this 7<sup>th</sup> day of March, 2008.

**BRANCH BANKING AND TRUST  
COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 Utility System Revenue Bond, Series 2008 (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):

Greenberg Traurig P.A.  
Bank Counsel Fees \$1,833.34

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 \$566.66.

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

5. Truth-in-Bonding Statement:

The Bond is being issued primarily to reimburse and finance the cost of constructing and acquiring certain additions, extensions and improvements to the water and wastewater utility system owned and operated by the Issuer.

Unless earlier redeemed, the Bond is expected to be repaid by October 1, 2025; at an interest rate of 4.01%, 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 a resolution of the City adopted on March 3, 2008 (the "Resolution"), in the manner as to the extent required in the Resolution. See the Resolution for a definition of Pledged Revenues. Issuance of the Bond is estimated to result in an annual average of approximately \$\_\_\_\_\_ of revenues of the City not being available to finance the services of the Issuer during the life of the Bond.

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

Branch Banking and Trust Company  
Governmental Finance  
5130 Parkway Plaza Boulevard, Building 9  
Charlotte, North Carolina 28217

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 7<sup>th</sup> day of March, 2008.

**BRANCH BANKING AND TRUST  
COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_