

RESOLUTION NO. 06-46

A RESOLUTION OF THE CITY COUNCIL OF MARCO ISLAND, FLORIDA, RELATING TO THE CITY'S SEPTIC TANK REPLACEMENT PROGRAM; CONFIRMING AND PROVIDING POLICY DIRECTION FOR CERTAIN EXTRAORDINARY PAYMENT ALTERNATIVES FOR OWNERS SUBJECT TO ASSESSMENTS FOR WASTEWATER CAPACITY IMPROVEMENTS AND WASTEWATER TREATMENT COLLECTION IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. AUTHORITY.** This resolution is adopted pursuant to Article VIII of the State Constitution and Chapter 166 and Chapter 180, Florida Statutes and other applicable provisions of law which provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, to perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law.

**SECTION 1.02. DEFINITIONS.** All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the City Ordinance No. 99-1, as codified in the City Code in Sections 2-281 through 2-379, as may be amended from time to time, and any Initial Assessment Resolution or Final Assessment Resolution consistent therewith.

**CITY OF MARCO ISLAND, FLORIDA**

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**DEFERRED PAYMENT AGREEMENTS**

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A RESOLUTION OF THE CITY COUNCIL OF MARCO ISLAND, FLORIDA, RELATING TO THE CITY'S SEPTIC TANK REPLACEMENT PROGRAM; CONFIRMING AND PROVIDING POLICY DIRECTION FOR CERTAIN EXTRAORDINARY PAYMENT ALTERNATIVES FOR OWNERS SUBJECT TO ASSESSMENTS FOR WASTEWATER CAPACITY IMPROVEMENTS AND WASTEWATER TREATMENT COLLECTION IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

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TABLE OF CONTENTS

PAGE

ARTICLE I  
DEFINITIONS AND CONSTRUCTION

SECTION 1.01. AUTHORITY .....1  
SECTION 1.02. DEFINITIONS .....1  
SECTION 1.03. FINDINGS.....2

ARTICLE II  
DEFERRED PAYMENT AGREEMENTS

SECTION 2.01. DEFERRED PAYMENT AGREEMENTS .....6  
SECTION 2.02. DEFERRED PAYMENTS FOR TWENTY (20) YEARS .....8  
SECTION 2.03. DEFERRED ASSESMENT  
FOR ON-SITE PERFORMANCE SYSTEMS .....9  
SECTION 2.04. FIXED COSTS FOR FUTURE ASSESSMENT AREAS.....12

ARTICLE III  
GENERAL PROVISIONS

SECTION 3.01. SEVERABILITY .....16  
SECTION 3.02. EFFECTIVE DATE .....16

Unless the context indicates otherwise, words imparting the singular number, include the plural number, and vice versa. When used in this Resolution, the following terms shall have the following meanings, unless the context clearly requires otherwise.

**“On-site Performance Based Wastewater Treatment System”** means a wastewater system located upon and serving property subject to an Assessment meeting operational criteria as defined in Rule 64E-6.025(1) or (2), Florida Administrative Code, or its successor in function.

**SECTION 1.03. FINDINGS.** It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, Section 2 of the Florida Constitution, Section 166.021, Florida Statutes, and other applicable provisions of law, the City has all powers of local self-government to render municipal services and may exercise any power for municipal purposes, except when expressly prohibited by law.

(B) The City has initiated an expansion program for its Utility System with the intent to construct and provide, in a series of phases or assessment areas to be determined from time to time, within geographic assessment areas served by, or capable of being served by, the Utility System, certain Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements in order to provide central wastewater service to owners of vacant parcels and owners and users of parcels served by on-site sewage treatment and disposal systems including, but not limited to, septic tanks and cess pits located within the

City and adjacent unincorporated areas served by the Utility System, based on funding availability and physical and economic feasibility.

(C) The City is currently in the process of creating such assessment areas and the Council desires to confirm and provide policy direction relating to extraordinary and alternative payment options for affected owners within existing and future assessment areas.

(D) The intent of this Resolution is to clarify policy direction and articulate additional payment alternatives that the City Council would like to make available to owners subject to Assessments which are affected by the City's septic tank replacement program and the provision of Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements.

(E) The use of Assessments is a fair and equitable alternative revenue source whereby benefited properties pay for capital improvements on a basis commensurate with the benefit provided.

(F) This Resolution provides, in part, for an alternative and extraordinary means to pay for benefits to affected properties, which have previously been determined to be equal to or exceed the Capital Cost, by making available payment and financing alternatives.

(G) This Resolution provides, in part, for a means for owners of certain properties that have an On-site Performance Based Wastewater Treatment System to defer connection

to the Utility System which will allow for the owner to use or amortize a substantial portion of the investment in and useful life of such on-site system. Such alternative is predicated, in part, on the extraordinary monitoring and treatment standards imposed on the owners of such On-site Performance Based Wastewater Treatment Systems by State law.

(H) This Resolution provides, in part, for alternative and extraordinary means for owners of property which the City reasonably anticipates to be subject to Assessments for Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements in the future to enter into a consensual agreement with the City which fixes the maximum Capital Cost for associated Assessments in advance.

(I) Although the Council does not recommend that any affected owner defer payment of Assessments, the Council will authorize entry into consensual agreements with owners of properties subject to Assessments to defer payment of Assessments as provided herein.

(J) It is fair and reasonable for the City to allow owners of certain properties that use On-site Performance Based Wastewater Treatment System to defer connection to the Utility System in order to recover the use of such investment in the manner provided herein.

(K) It is fair and reasonable for the City to enter into consensual agreements with owners of properties in certain circumstances, to fix the maximum Capital Cost of future

Assessments for Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements, as such activity (1) advances reasonable certainty to the owner and the owner's successors of record as to the availability of central wastewater improvements and the cost therefore, (2) more efficiently advances planning and construction of Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements in a manner which benefits all users of the Utility System, (3) increases and strengthens the revenue stream to the Utility System, and reduces the cost of capital improvements to both the affected owner and generally all ratepayers by adding new customers and avoiding increased construction costs resulting from inflation and delay, and (4) serves to assure more quickly that the Utility System and all ratepayers will accomplish the positive environmental results reasonably anticipated to result from the extension, construction, and provision of central wastewater services and facilities throughout the Marco Island area.

**ARTICLE II**  
**DEFERRED PAYMENT AGREEMENTS**

**SECTION 2.01. DEFERRED PAYMENT AGREEMENTS.**

(A) In an attempt to provide extraordinary alternative payment opportunities to owners whose property is subjected to Assessments for Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements, affected owners may be afforded the opportunity to enter into a Deferred Payment Agreement with the City. Each Deferred Payment Agreement shall be executed with the same formality as a deed and recorded in the Official Records of Collier County, Florida, in a form and manner authorized by resolution of the Council and approved by the City Attorney.

(B) Each Deferred Payment Agreement shall, among other matters, (1) include covenants that irrevocably bind all record owners of the affected property and their successors in interest, (2) covenant and establish that the Deferred Payment Agreement shall be construed in all respects as a consensual special assessment, which shall constitute a lien against the subject property equal in rank and dignity to the liens of all state, county, district or municipal taxes and other non-ad valorem assessments and, except as otherwise provided by law, such lien shall be at all times superior in dignity to all liens, titles and claims, until paid, (3) acknowledge with specificity and certainty that the subject property has received direct benefit in excess of any amount due to the City under the Deferred Payment Agreement, and that the amounts due and payable represent a fair and

reasonable apportionment, in all respects, of the costs and all charges attributed to the subject property in association with any Wastewater Capacity Improvements or Wastewater Treatment Collection Improvements, (4) agree to the payment of the City's attorney's fees and all costs in preparation of the Deferred Payment Agreement and, in the event of dispute, foreclosure, enforcement, or any execution of or under the Deferred Payment Agreement, and (5) agree to venue in State court in Collier County and the waiver of trial by jury should any dispute arise. It being the intent of the City Council that the Deferred Payment Agreement shall carry out the policy intent to provide alternative and extraordinary payment opportunities and as fundamental consideration therefore, all questions about the validity, appropriateness, and enforceability of the charges and costs associated with any Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements or the Deferred Payment Agreement shall upon execution of the Deferred Payment Agreement be forever held in repose.

(C) Notwithstanding anything contained in this Resolution or Deferred Payment Agreement to the contrary, no Deferred Payment Agreement shall be interpreted to allow any owner to avoid paying for a fair-share of any new growth or additional demand resulting from additions, reconstruction, or other improvements to a property causing substantial additional demands upon the Utility System which were not considered or used in determining any Assessments, or the amount due under any Deferred Payment Agreement.

**SECTION 2.02. DEFERRED PAYMENT FOR TWENTY (20) YEARS.**

(A) Upon imposition of an Assessment within any Assessment Area an opportunity shall be made available to affected owners of residential properties who enter into a Deferred Payment Agreement with the City which allows the payment of the Assessment, and all accrued interest thereon, in a single payment due no later than the twentieth (20th) anniversary of the Deferred Payment Agreement. Prior to the issuance of any obligations or other evidence of indebtedness issued or incurred by the City to finance any portion of Wastewater Capacity Improvements and/or Wastewater Treatment Collection Improvements secured, in whole or in part, by the proceeds of the Assessment, the City shall offer such option to each affected residential property owner.

(B) Upon entering into the Deferred Payment Agreement provided for in this Section, the City shall advance and fund, on behalf of the owner, the Assessment attributable to the property of the owner; and, the Deferred Payment Agreement shall in turn provide for the alternative consensual special assessment upon the benefited property, in the principal amount advanced or funded by the City, which shall be collected separate and apart from any other Assessments imposed as a result of an Initial Assessment Resolution, or any Final Assessment Resolution.

(C) Any Deferred Payment Agreement provided for in this Section shall require that the owner acknowledge the estimated amount of the final payment due, including principal and accrued interest, at the full term thereof, and acknowledgement that the

separate lien created by the Deferred Payment Agreement on the subject property is an alternative and consensual special assessment.

(D) Any Deferred Payment Agreement entered into pursuant to this Section shall provide that an amount equivalent to the Assessment, plus all accrued interest, shall be due in full twenty (20) years after execution of the Deferred Payment Agreement, or upon transfer of ownership of the assessed property, whichever first occurs. Every Deferred Payment Agreement shall clearly state that the transfer of ownership of the assessed property shall be deemed to accelerate the full amount due as of the date of transfer, and that after such transfer the outstanding balance including accrued interest, shall thereafter accrue interest at the highest legal rate.

**SECTION 2.03. DEFERRED ASSESSMENT FOR ON-SITE PERFORMANCE SYSTEMS.**

(A) Upon imposition of an Assessment within any Assessment Area, an opportunity shall be made available to affected owners of residential properties who enter into a Deferred Payment Agreement with the City, which (1) provides that all principal and interest which would otherwise accrue as a result of the Assessment will be deferred for a period of no longer than the tenth (10<sup>th</sup>) anniversary of the Deferred Payment Agreement, after which time the affected owner shall connect the subject property to the Utility System, and (2) provides that, beginning at the sooner of the time of connection of the subject property to the Utility System or the tenth (10<sup>th</sup>) anniversary of the Deferred Payment

Agreement, the City shall be authorized to collect a special assessment in an amount equivalent to the Capital Cost, and any other costs associated with entering into the Deferred Payment Agreement advanced by the City, over a period of the next twenty (20) years. Prior to issuance of any obligations or other evidence of indebtedness issued or incurred by the City to finance any portion of the Wastewater Capacity Improvements and/or Wastewater Treatment Collection Improvements secured, in whole or in part, by the proceeds of an Assessment, the City shall offer such option to each affected residential property owner.

(B) Upon entering into the Deferred Payment Agreement provided for in this Section, the City shall advance and fund, on behalf of the owner, the Assessment attributable to the property of the owner; and, the Deferred Payment Agreement shall in turn provide for the alternative consensual special assessment upon the benefited property in the principal amount advanced or funded by the City, which shall be collected separate and apart from any other Assessments imposed as a result on an Initial Assessment Resolution, or any Final Assessment Resolution.

(C) Any Deferred Payment Agreement provided for in this Section shall require that the owner acknowledge that the subject property is immediately benefited in an amount not less than the total amount to be paid under the Deferred Payment Agreement, and that the separate lien created by the Deferred Payment Agreement on the subject property is an alternative and consensual special assessment.

(D) Any Deferred Payment Agreement provided for in this Section shall clearly state that the transfer of ownership of the assessed property shall be subject to the terms and conditions of the Deferred Payment Agreement and that the transfer of ownership of the assessed property after either the date of connection of the property to the Utility System or the tenth (10<sup>th</sup>) anniversary of the Deferred Payment Agreement shall be deemed to accelerate the full amount due as of the date of transfer; and, that after such transfer the outstanding balance, including accrued interest, shall thereafter accrue interest at the highest legal rate. No acceleration shall occur for so long as the On-site Performance Based Wastewater Treatment System is in active use during the period prior to the tenth (10<sup>th</sup>) anniversary of the Deferred Payment Agreement. For the purposes of this Resolution, active use assumes annual renewal of all applicable permits issued by the Collier county Health Department and compliance with any other maintenance or monitoring required by law.

(E) Upon the tenth (10<sup>th</sup>) anniversary of the Deferred Payment Agreement, the Deferred Payment Agreement shall provide that the City will authorized to then collect the balance due thereunder, together with accrued interest and collection costs, in twenty (20) equal annual payments using any collection method available to the City by law, including the uniform collection method authorized by Chapter 197, Florida Statutes, or its successor in function. Provided, however, that upon either the tenth (10<sup>th</sup>) anniversary of the Deferred Payment Agreement or connection of the subject property to the Utility System,

the City shall give the subject property owner the option to amend the Deferred Payment Agreement use any other payment alternative available under this Resolution or then available for similarly situated property owners. In the event that any transfer of ownership occurs which would otherwise accelerate the full amount due as of the date of transfer, the outstanding balance, including accrued interest, under such Deferred Payment Agreement shall thereafter accrue at the highest legal rate.

**SECTION 2.04. FIXED COSTS FOR FUTURE ASSESSMENT AREAS.**

(A) In an extraordinary effort to increase and strengthen the revenue stream of the Utility System, reduce the costs of wastewater capital improvements to both owners anticipated to be affected by the extension of central wastewater facilities to their lands and generally to all rate payers of the Utility System, by avoiding increased construction costs related from inflation and delay, an opportunity shall be made available to affected owners of residential properties anticipated to be subject to Assessments, which allows affected owners to enter into consensual agreements to fix the maximum costs of such future assessments for Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements. Such an option will effectively assure that the estimated costs for wastewater facility construction developed in 2006 can be fixed and made available to property owners anticipated to be subject to future Assessment Areas anticipated to be established after 2007 for such wastewater improvements, regardless of the actual construction costs at the time of installation.

(B) Within approximately ninety (90) days, the City Manager is directed and authorized to identify all affected properties which may be included in any Assessment Area established after 2007 as a part of the City's septic tank replacement program and anticipated to be subject to the provision of Wastewater Capacity Improvements and Wastewater Treatment Collection Improvements, and offer such affected property owners the following Deferred Payment Agreement alternatives:

(1) Cash Payment. One-time voluntary cash payment, which assures the affected owner that the subject property will experience no additional costs for Wastewater Collection Improvements or Wastewater Treatment Capacity Improvements. Such option will effectively afford the affected owner an approximately six percent (6%) discount for cash payment and an assurance that no additional Assessments or impact fees will be due for Wastewater Collection Improvements or Wastewater Treatment Capacity Improvements upon connection to the Utility System.

(2) Voluntary Assessment with Equal Payments Over Twenty (20) Years. Alternative consensual special assessment upon benefited property in the principle amount of the estimated Capital Cost which shall be collected separate and apart, and in lieu of, any Assessments imposed as a result an Initial Assessment Resolution, or any Final Assessment Resolution. Such option will effectively afford the affected owner the opportunity to fix the future cost of special assessments for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements based upon current construction cost

estimates and would be paid in twenty (20) equal annual payments and collected on the same bill as taxes using the uniform method of collection authorized by Chapter 197, Florida Statutes, or its successor in function, or any other method of collection allowed by law.

(3) Voluntary Assessment with a Single Deferred Payment. Alternative consensual special assessment upon benefited property in the principal amount of the estimated Capital Cost, together with all accrued interest, due in a single payment no later than the twentieth (20<sup>th</sup>) anniversary of the Deferred Payment Agreement and which would be collected separate and apart, and in lieu of, any Assessments imposed as a result of an Initial Assessment Resolution or any Final Assessment Resolution. Such option will effectively afford the affected owner the opportunity to (a) fix the cost of future special assessments for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements based upon current construction cost estimates, and (b) then pay such consensual special assessment, and all accrued interest thereon, in a single payment due no later than the twentieth (20<sup>th</sup>) anniversary of the Deferred Payment Agreement. In the event any property owner elects such alternative, the applicable Deferred Payment Agreement shall include all provisions for such deferred payment alternatives also contained in Section 2.02 of this Resolution.

(C) All the foregoing voluntary options provided for in this Section will require that upon transfer of ownership of the subject property, the balance of the Assessment shall

be deemed to accelerate and the full amount shall be due as of the date of transfer, and that after such transfer the outstanding balance, including interest, shall thereafter accrue at the highest legal rate.

(D) If one of the voluntary assessment options provided for in this Section is not selected within the stipulated time period in the notice provided by the City, then property owners subject to assessments in the future will be assessed on an equivalent residential basis, the actual Capital Cost and Project Cost for their respective Assessment Area at the time such improvements are constructed.

(E) In order to offer the foregoing fixed costs for future Assessment Areas, the City Council determines that it is fair and reasonable to underwrite the increase in construction costs expected to result from inflation and delay through utility rates collected from all Utility System ratepayers and interest or investment earnings on all funds advanced to the City by property owners seeking to avail themselves of the advance payment options presented in this Section.

(F) The options available under this Section shall be offered only to property owners in Assessment Areas established, or anticipated to be established, after 2007.

ARTICLE III  
GENERAL PROVISIONS

SECTION 3.01. SEVERABILITY.

(A) If any clause, section, or other part of this resolution shall be held by any court of competent jurisdiction unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affects the validity of the other provisions in this resolution.

(B) This Resolution is not intended to, nor shall it be construed to, repeal or conflict with any prior or future City resolution or ordinance relating to any special assessment or the financing thereof.

SECTION 3.02. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

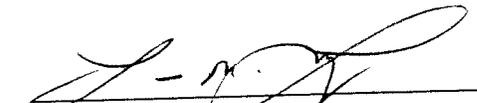
DULY ADOPTED this 5th day of September 2006.

CITY COUNCIL OF MARCO ISLAND,  
FLORIDA

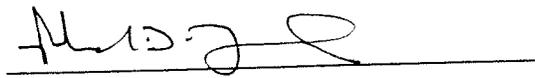
By: Terri DiSciullo  
Terri DiSciullo, Chairwoman

(SEAL)

ATTEST:

  
Laura M. Litzan, City Clerk

Approved as to Form:

  
Richard D. Yovanovich, City Attorney