

CITY OF MARCO ISLAND

RESOLUTION NO. 06-42

A RESOLUTION AUTHORIZING THE CITY OF MARCO ISLAND'S ACQUISITION, BY GIFT, PURCHASE OR EMINENT DOMAIN, OF FEE SIMPLE INTEREST IN PROPERTY DESCRIBED HEREIN FOR A TRAILHEAD FOR THE PLANNED LINEAR PARK ALONG WINTERBERRY DRIVE AND THE LOCATION OF A MASTER LIFT STATION FACILITY; AUTHORIZING THE EXERCISE OF THE CITY OF MARCO ISLAND'S POWER OF EMINENT DOMAIN TO CONDEMN REAL PROPERTY FOR PUBLIC USE OR PURPOSE; DETERMINING THAT IT IS NECESSARY TO PERFORM A PUBLIC PROJECT BY ADDING AN ADDITIONAL SEGMENT TO THE CITY'S LINEAR PARK AND LOCATING A MASTER LIFT STATION FACILITY; SETTING FORTH THE PUBLIC PURPOSE AND PUBLIC NECESSITY OF SUCH PROJECT; DESCRIBING BOUNDARIES OF THE PROJECT; DETERMINING THAT THE ACQUISITION OF SUCH PROPERTY IS FOR A PUBLIC PURPOSE AND IS NECESSARY TO ACCOMPLISH THAT PURPOSE; AUTHORIZING AND DIRECTING APPROPRIATE STAFF TO COMMENCE GOOD FAITH PRE-LITIGATION NEGOTIATION PROCESSES; AUTHORIZING LEGAL COUNSEL TO INSTITUTE CONDEMNATION PROCEEDINGS FOR PROPERTIES THAT CANNOT BE PURCHASED THROUGH PRE-LITIGATION NEGOTIATIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marco Island is planning a Linear Park that will run adjacent to the LCEC utility easement along Winterberry Drive in the City of Marco Island; and

WHEREAS, the City of Marco Island is undergoing an expansion of the City's wastewater collection system; and

WHEREAS, the City Council has deemed it necessary and appropriate to construct a trailhead for the planned Linear Park along Winterberry Drive and construct a master lift station facility to service the City's wastewater collection system; and

WHEREAS, the Property upon and within which such the trailhead for the Linear Park and the master lift station facility are to be constructed is more particularly described in this Resolution and the Property is owned by private (i.e., non-governmental) parties; and

WHEREAS, the City Council, after having considered and evaluated the merits of the trailhead for the Linear Park and the master lift station facility, the availability of alternative routes and locations, the cost of the project, environmental factors associated with the project and safety factors of the project, has deemed it in the best interests of the City of Marco Island and its citizens to acquire such private property as described herein for the project by gift, purchase or eminent domain (condemnation); and

WHEREAS, as part of pre-litigation negotiations, the City may take reasonable steps to acquire such private property by gift or purchase, but the City Council is willing, and hereby evidences its intent, to exercise the City’s power of eminent domain to acquire such private property for the public use or purpose described herein; and

WHEREAS, the City Council has determined that the condemnation of such property is necessary for such public use or purpose; and

WHEREAS, the City Council has determined it appropriate to adopt this resolution again authorizing and directing the acquisition of such properties.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marco Island, Florida:

SECTION 1. FINDINGS.

The City Council of the City of Marco Island, Florida, hereby finds as follows:

- a. It is necessary for the public health, safety and welfare to perform and construct a public project known as the Linear Park of which the trailhead project shall be a portion, said public project hereinafter referred to as the “Linear Park Project”. It is further necessary for the public health, safety and welfare to perform and construct a public project for improving the City’s wastewater collection system and locating a master lift station facility, said public project known as the “Master Lift Station Project”. The Linear Park Project and the Master Lift Station Project are sometimes referred to herein collectively as the “Project.”

- b. The City hereby declares that the Linear Park Project is for the public purposes of safety, health and welfare of the citizens of Marco Island and other persons using the proposed Linear Park, the enhancement of recreational facilities in the City of Marco Island, and to further enhance the health, recreational and welfare of those using the proposed Linear Park, and the citizens and residents of the City of Marco Island as a whole, and that of visitors to Marco Island. The City hereby declares that the Master Lift Station Project is for the public purposes of safety, health and welfare of the citizens of Marco Island and other persons using the wastewater system facilities, and to further enhance the health and welfare of those using the wastewater system, and the citizens and residents of the City of Marco Island as a whole, and that of visitors to Marco Island.
- c. The Plan for the Project is described and/or depicted in a document prepared by McGee & Associates dated September 2006. A copy of the Plan is on file with the office of the City Manager. The Project is a public purpose.
- d. The acquisition of the property described below for the Project is a public purpose and is necessary to accomplish the public purpose.
- e. The property to be acquired for the Project is located within the City of Marco Island, Collier County, Florida, and is more fully described in Exhibit "B" attached hereto and incorporated herein by this reference.
- f. The City intends to a fee simple interest sufficient for the Project in the property described in Exhibit "B".
- g. The City has made diligent search and inquiry to discover the names and addresses of affected property owners and, prior to instituting litigation, if necessary, will make diligent search and inquiry to discover and update the names and addresses, legal disabilities, if any, and interests in the property of owners, lessees, mortgagees, judgment creditors, lien holders, persons in

possession, and all persons having or claiming to have any interest in the property. Prior to instituting eminent domain litigation, if necessary, the City will determine that those listed, or to be listed, are the only persons having or claiming to have any interest in the property.

- h. No mobile home is located on the property sought to be acquired.
- i. The City Council specifically finds and determines that it is of paramount importance to the safety of the citizens of Marco Island that the property interests described in this Resolution be acquired by the City in order to construct the Project.

SECTION 2. AUTHORITY AND ESTATE.

By virtue of the authority granted to the City of Marco Island by Article 10, Section 6 of the Florida Constitution and by Chapters 73 and 74 and Sections 166.401 and 166.411, Florida Statutes, and all other statutory or common law which may grant to the City the power to institute and proceed with acquiring property under the exercise of the power of eminent domain, the City Council hereby exercises its power of eminent domain and authorizes and directs the City Manager or City Attorney or designee to issue the necessary pre-litigation notice, to enter into the required good faith pre-litigation negotiation process, to commence and prosecute any and all proceedings, including condemnation proceedings, necessary to acquire the property described in Exhibit "B", in the form of fee simple interests for the above described public use or purpose, to provide a good faith estimate of value, to provide a declaration of taking in accordance with Chapter 74, Florida Statutes and to seek an order of taking as soon as practicable.

SECTION 3. EFFECTIVE DATE.

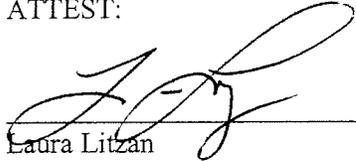
This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Marco Island, Florida,
this 31st day of October, 2006.

MARCO ISLAND CITY COUNCIL
MARCO ISLAND, FLORIDA

By: Terri DiSciullo
Terri DiSciullo, Chairwoman

ATTEST:



Laura Litzan
City Clerk

Approved as to form and legality:



Richard D. Yovanovich
City Attorney

EXHIBIT "B"
PROPERTY- LEGAL DESCRIPTION

Lot 11, Block 261, Marco Beach Unit Eight, according to the map or plat thereof as recorded in Plat Book 6, Pages 63-68, Public Records of Collier County, Florida.