

RESOLUTION NO. 06-47

A RESOLUTION OF THE CITY COUNCIL OF MARCO ISLAND, FLORIDA, RELATING TO THE CITY'S SEPTIC TANK REPLACEMENT PROGRAM; AUTHORIZING AND DIRECTING THE EXECUTION OF AN AGREEMENT WITH NORTH MARCO UTILITY COMPANY, INC.; PROVIDING FOR DELIVERY OF WASTEWATER COLLECTION IMPROVEMENTS TO AREAS WITHIN THE CITY SERVED BY NORTH MARCO UTILITY COMPANY, INC.; PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 2. AUTHORITY AND DIRECTION. The City Manager is hereby authorized and directed to execute and deliver an Agreement by and between the City of Marco Island, Florida, and North Marco Utility Company, Inc. in substantially the form attached hereto as Exhibit "A" and incorporated herein (the "Utility Agreement"), with such omissions, insertions, and variations as may be necessary and/or desirable and approved

by the City Manager prior to the delivery thereof, such necessity and/or desirability and approval by the City Manager to be presumed by the execution and delivery thereof. The City Treasurer-Clerk shall attest the City Manager's signature and shall imprint the official seal of the City on the Utility Agreement.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

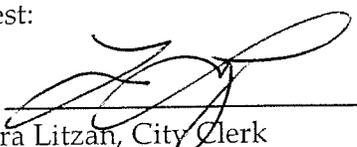
DULY ADOPTED this 16th day of October, 2006.

**CITY COUNCIL OF MARCO
ISLAND, FLORIDA**

By: Terri DiSciullo
Terri DiSciullo, Chairwoman

(SEAL)

Attest:

By: 
Laura Litzan, City Clerk

Resolution Approving North Marco Utility Company Agreement

**EXHIBIT A
FORM OF
UTILITY AGREEMENT**

AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of October, 2006, by and between the City of Marco Island, Florida (hereinafter the "City"), and North Marco Utility Company, Inc., a Florida corporation ("NMU").

WITNESSETH

WHEREAS, NMU owns and operates a wastewater collection utility system, commonly referred to as the North Marco Utility Company wastewater utility system, which provides service to a small portion of the incorporated area of the City of Marco Island; and

WHEREAS, NMU is subject to regulation by Collier County (the "County") pursuant to the provisions of Chapter 367, Florida Statutes, and applicable County ordinances and regulations; and

WHEREAS, the City operates a substantially larger water and wastewater utility system that serves a substantial portion of Marco Island and receives and treats wastewater collected by NMU through bulk services arrangements; and

WHEREAS, the City has initiated a substantial expansion program for its utility system with the intent to construct, in a series of phases or assessment areas to be determined from time to time, wastewater collection improvements and wastewater treatment capacity improvements in order to provide central wastewater service to owners

and users of parcels otherwise served by on-site sewage treatment and disposal systems including, but not limited to, septic tanks and cesspits located on Marco Island and adjacent unincorporated areas based upon funding availability and fiscal and economic feasibility; and

WHEREAS, the City is embarking upon delivery of such wastewater improvements, in part to equitably, ecologically, and economically manage the collection and disposal of wastewater and improve the water quality within and surrounding Marco Island; and

WHEREAS, the presence of central wastewater collection and disposal facilities enhance and benefit the environment and the health, safety and welfare of landowners and persons inhabiting Marco Island and removes environmental burdens created by inadequate, obsolete or poorly maintained on-site sewage treatment and disposal systems, and will serve to end the proliferation of on-site sewage treatment and disposal systems; and

WHEREAS, the City and NMU are willing to cooperatively work together to deliver wastewater collection improvements and make available and provide wastewater treatment capacity improvements to areas within the City and capable of being served by NMU through its wastewater collection system, and desire to provide similar payment opportunities to those afforded other utility ratepayers of the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10.00 and for other good

and valuable consideration exchanged between the parties, receipt of which is hereby acknowledged by each party, the parties to this Agreement do undertake, promise and agree for themselves, their successors and assigns as follows.

SECTION 1. RECITALS. The above recitals are true and correct and incorporated herein.

SECTION 2. DELIVERY OF WASTEWATER IMPROVEMENTS TO PORT MARCO AND OLD MARCO ASSESSMENT AREAS.

(A) Concurrent with the execution of this Agreement, the City has embarked upon the creation of the Port Marco Assessment Area and Old Marco Assessment Area in conformance with its Ordinance No. 99-1, codified in the City Code in sections 2-281 through 2-379, as may be amended from time to time, or its successor in function (the "Assessment Ordinance"), for the purpose of levying and imposing special assessments for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements (as those terms are defined in the City's implementing resolutions adopted pursuant to the Assessment Ordinance).

(B) As an inducement to the City to impose the foregoing special assessments and make available and provide the associated Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements, NMU agrees that the City shall own and NMU hereby leases from the City and agrees to maintain at its expense all associated Wastewater Collection Improvements constructed by the City to serve the Old Marco

Assessment Area and Port Marco Assessment Area for nominal consideration (\$10.00 exchanged and received upon execution hereof) and covenants on behalf of itself and its successors that it shall not ever claim or attempt to receive the value of said facilities, or characterize said facilities as contributions in aid of construction, or otherwise attempt to recover the value of such improvements through any utility rates or upon the sale, disposition, or taking of its wastewater utility system or any portion thereof. Such covenant is expressly intended to avoid the circumstance where affected property owners pay for such wastewater improvements first through special assessments imposed by the City for the construction and installation thereof, and a second time through ratemaking concepts or debt service payments to cover any payments made to NMU, or its successors, upon sale, disposition, taking or other transfer of its wastewater system or any portion thereof. Such covenant shall be deemed to run with the NMU utility system and be for the benefit of the City and all affected property owners within the foregoing assessment areas. Nothing herein shall preclude NMU from recovering any costs of operation, repair and maintenance or replacement of equipment through any utility rates or ratemaking concepts, nor does this covenant affect any capital improvements or assets of NMU other than the subject Wastewater Collection Improvements leased to NMU hereunder.

(C) As an inducement to enter into this Agreement, NMU understands that it shall be its sole responsibility to pay for the cost of all design, permitting and other costs required for the extension or provision of any other sewer collection transmission lines or

other facilities to be installed within its service areas other than the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements which are the subject of special assessments imposed by the City in the Old Marco Assessment Area and the Port Marco Assessment Area. Upon completion of the Wastewater Collection Improvements, NMU shall thereafter offer service to the affected property owners within the Old Marco Assessment Area and the Port Marco Assessment Area based upon rates and charges in its approved tariff, including any separate impact fees NMU is authorized by law to impose for the remaining portion of its wastewater utility system. On or before completion of the Wastewater Collection Improvements, the City shall reimburse NMU for its actual and verifiable costs for the design, permitting, and reasonable administrative costs associated with the subject Wastewater Collection Improvements, in an amount not to exceed \$27,000.

(D) By execution hereof, NMU consents in all respects and waives any objection to the City providing the foregoing Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements or to any deferred payment alternatives or agreements now or hereafter entered into by the City with affected property owners.

SECTION 3. CONSTRUCTION OF IMPROVEMENTS; TERM AND TERMINATION.

(A) Upon execution hereof, the City anticipates commencing to finalize the design, permitting and financing of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements for the Old Marco Assessment Area and

the Port Marco Assessment Area and thereafter bid and contract for construction of such improvements in 2007. The City is authorized, in conjunction with NMU, to connect customers to the Wastewater Collection Improvements and connect the Wastewater Collection Improvements to the NMU utility facilities in the normal course of business. The City shall not alter or interfere with NMU utility facilities without direct authorization by NMU. The parties covenant to use sound engineering judgment and cooperate to achieve such connections.

(B) This Agreement shall remain in full force and effect for so long as the subject Wastewater Collection Improvements respectively serve affected property owners within the Old Marco Assessment Area and Port Marco Assessment Area.

(C) Either party may terminate this Agreement in the event the contemplated construction of Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements has not commenced on or before November 1, 2007, or the subject special assessments are not validated or otherwise imposed.

SECTION 4. GENERAL.

(A) The parties hereto shall, upon reasonable request of the other party, execute, acknowledge and deliver all such further documents and take such actions as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties hereunder, or as otherwise may be required in furtherance of the objectives contemplated herein. Each of the parties hereto shall provide the other with

such assistance as reasonably may be requested by the other in connection with the objectives contemplated herein. Throughout the term of this Agreement, the City shall have the reasonable right, but not the duty, to enter on or into and inspect the Wastewater Collection Improvements or any wastewater utility facilities connected thereto.

(B) This Agreement is subordinate to the rights of any holders of bonds or other obligations (either taxable or exempt from taxation) issued by the City to finance the subject wastewater improvements, whether such bonds or obligations are issued before or after execution of this Agreement.

(C) NMU agrees to fully cooperate with the City with regard to the design, permitting, construction activities and connection of such improvements to the NMU utility system, future maintenance and monitoring thereof, and further agrees to assist the City as it prepares disclosure information relating to any financing or bond offering documents reasonably required as a part of the disclosure or financing process.

(D) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and unless otherwise required by law or agreed to by the parties hereto, venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the circuit court in and for Collier County, Florida. The parties irrevocably and voluntarily waive any right they may have to a trial by jury with respect to any claim or controversy between the parties, whether arising in contract or tort or by statute.

(E) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

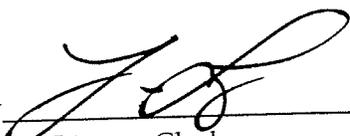
[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City of Marco Island and North Marco Utility Company, Inc. have caused this Agreement to be executed and delivered as of the date first above written.

CITY OF MARCO ISLAND, FLORIDA

By: _____
A. William Moss, City Manager

ATTEST:

By:  _____
Laura Litzan, Clerk

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on October ____, 2006 by A. William Moss, as City Manager of the City of Marco Island, on behalf of the City. He is personally known to me or has produced a driver's license as identification.

Print Name: _____
NOTARY PUBLIC
State of Florida
Commission # _____
My Commission Expires: _____

IN WITNESS WHEREOF, the City of Marco Island and North Marco Utility Company, Inc. have caused this Agreement to be executed and delivered as of the date first above written.

**NORTH MARCO UTILITY COMPANY,
INC., a Florida corporation**

Signed, sealed and delivered
In our presence:

By: _____
Craig R. Woodward, President

Witness #1

(Witness #1 printed name)

Witness #2

(Witness #2 printed name)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on October ____, 2006 by Craig R. Woodward, as President of North Marco Utility Company, Inc., on behalf of the corporation. He is personally known to me or has produced a driver's license as identification.

Print Name: _____
NOTARY PUBLIC
State of Florida
Commission # _____
My Commission Expires: _____