

RESOLUTION NO. 05-__71

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE DEFINITION OF "GROSS REVENUES" CONTAINED IN RESOLUTION NO. 03-55; PROVIDING OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marco Island, Florida (the "City") adopted Resolution No. 03-55 on September 29, 2003 (as amended from time to time, the "Master Resolution"); and

WHEREAS, the City has determined that certain language in the definition of "Gross Revenues" or "Revenues" in Section 2 of the Master Resolution is ambiguous; and

WHEREAS, the City now desires to amend the Master Resolution for the purpose of clarifying such definition; and

WHEREAS, the City, pursuant to the requirements of Section 23 of the Master Resolution, expects to obtain the written consent of MBIA Insurance Corporation ("MBIA") in the form attached hereto as Exhibit "A" (the "MBIA Consent"); and

WHEREAS, the City issued its Utility System Revenue Bonds, Series 2003 (the "Bonds"), and such Bonds are now rated in as high a rating category in which such Bonds were rated at the time of initial issuance and delivery by the rating agencies that rated such Bonds; and

WHEREAS, the City, pursuant to such Section 23, has provided timely notice of such amendments to each rating agency that rated the Bonds; and

WHEREAS, this resolution shall constitute a Supplemental Resolution as such term is defined in the Master Resolution, and all capitalized undefined terms used herein shall have the meaning set forth in the Master Resolution;

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

SECTION 1. Amendment of the Master Resolution. Pursuant to Section 23 of the Master Resolution, the definition of "Gross Revenues" and "Revenues" contained in Section 2 of the Master Resolution is hereby amended and restated to read as follows (insertions are shown with bolding and underlining):

"Gross Revenues" or "Revenues" shall mean all income and earnings, including Connection Fees, received by the Issuer or accrued to the Issuer from

the ownership, use or operation of the System and all parts thereof, including, without limitation, unencumbered non-ad valorem special assessments which are not pledged for the repayment of, or as security for, any indebtedness of the City, whether currently outstanding or hereafter issued, other than the Bonds, and which are legally available to be used as contemplated hereunder, moneys deposited from the Rate Stabilization Fund into the Revenue Fund in accordance with the terms hereof, provided any moneys transferred from the Rate Stabilization Fund into the Revenue Fund within 90 days following the end of a Fiscal Year may be designated by the Issuer as Gross Revenues of such prior Fiscal Year, and shall also include investment income, if any, earned on any fund or account created pursuant to this Resolution, except for the Rebate Fund, the Sewer System Capital Facilities Fee Fund, the Water System Capital Facilities Fee Fund, and also including any income or earnings (including investment income) derived from the System in any prior Fiscal Year and which is redeposited into the Revenue Fund, all as calculated in accordance with generally accepted accounting principles, and any payment received by the Issuer as contemplated in Section 28 hereof, but "Gross Revenues" or "Revenues" shall not include non-ad valorem special assessments which are pledged for the repayment of, or as security for, any indebtedness of the City, whether currently outstanding or hereafter issued, other than the Bonds, proceeds from the sale or other disposition of the System or any part thereof, condemnation awards or proceeds of insurance received with respect to the System and moneys deposited to the Rate Stabilization Fund from the Surplus Fund, including any moneys transferred from the Surplus Fund to the Rate Stabilization Fund within 90 days following the end of a Fiscal Year which the Issuer determines not to be Gross Revenues of such prior Fiscal year, Contributions in Aid of Construction, Sewer System Capital Facilities Fees, Water System Capital Facilities Fees, or unrealized gains or losses from investments.

SECTION 2. Transcript to Insurer. MBIA, as the insurer of 100% of the aggregate principal amount of the Bonds now Outstanding, shall be provided with a full transcript of all proceedings relating to the adoption of this resolution.

SECTION 3. Repeal of Inconsistent Instruments. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

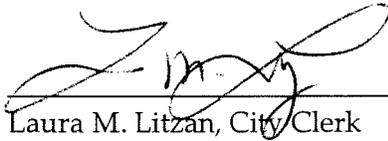
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SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage, provided, however, that such effectiveness is conditioned upon receipt by the City Clerk of the executed MBIA Consent.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 17th day of October, 2005.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA

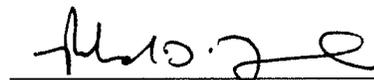


Laura M. Litzan, City Clerk

By: 

Vickie Kelber, Chairwoman

Approved as to Form:



Richard D. Yovanovich, City Attorney

EXHIBIT A
WRITTEN CONSENT OF MBIA

CONSENT OF INSURER

MBIA Insurance Corporation, as the Insurer of 100% of the outstanding City of Marco Island, Florida Utility System Revenue Bonds, Series 2003 (the "Bonds") which were issued pursuant to Resolution No. 03-55 adopted by the City Council of the City of Marco Island, Florida on September 29, 2003 (as amended from time to time, the "Master Resolution"), DOES HEREBY ACKNOWLEDGE receipt of notice of the proposed Supplemental Resolution (as such term is defined in the Master Resolution) hereto attached as Exhibit "A" (the "Amendment").

Furthermore, MBIA DOES HEREBY CONSENT TO AND APPROVES the adoption of the Amendment on behalf of itself and the holders of the Bonds pursuant to Section 23 of the Master Resolution.

Dated this ___ day of _____, 2005

MBIA INSURANCE CORPORATION

By: _____

Name: _____

Title: _____

as an Authorized Representative

EXHIBIT A

PROPOSED SUPPLEMENTAL RESOLUTION



Capital Strength. Triple-A Performance.

MBIA Insurance Corporation
113 King Street, Armonk, NY 10504
Tel 914-273-4545
www.mbia.com

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Dated this 17 day of Oct., 2005

MBIA INSURANCE CORPORATION

By: Gerard Murray
Name: Gerard E. Murray
Title: Director
as an Authorized Representative

