

RESOLUTION NO. 04-05

A RESOLUTION SUPPLEMENTING RESOLUTION NO. 04-04 ADOPTED BY THE CITY COUNCIL OF THE CITY ON MARCH 1, 2004; AUTHORIZING AND APPROVING THE PUBLIC SALE, BY COMPETITIVE BID, OF NOT TO EXCEED \$10,000,000 CITY OF MARCO ISLAND, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2004 TO FINANCE THE ACQUISITION OF CERTAIN LAND WITHIN THE CITY, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS HEREIN CONTAINED AND SUBJECT TO THE TERMS AND CONDITIONS OF AN OFFICIAL NOTICE OF SALE AND BIDDING INSTRUCTIONS; APPROVING THE FORMS OF THE OFFICIAL NOTICE OF SALE AND BIDDING INSTRUCTIONS AND SUMMARY NOTICE OF SALE PERTAINING TO SUCH BONDS; MAKING CERTAIN PROVISIONS AND DELEGATING CERTAIN RESPONSIBILITIES TO THE FINANCE DIRECTOR WITH RESPECT TO THE NOTICE, BIDDING AND SALE OF THE BONDS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A CONTINUING DISCLOSURE CERTIFICATE AND A BOND REGISTRAR AND PAYING AGENT AGREEMENT; APPOINTING THE BOND REGISTRAR AND PAYING AGENT; APPOINTING THE BOND INSURER; APPROVING THE FORM OF A PRELIMINARY OFFICIAL STATEMENT AND THE EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF IF DECLARED INVALID; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island, Florida (the "City" or the "Issuer") has, by resolution heretofore adopted by the City Council of the Issuer on March 1, 2004 (together with this Resolution, collectively, the "Bond Resolution"), authorized the issuance of not to exceed \$10,000,000 City of Marco Island, Florida General Obligation Bonds, Series 2004 (the "Series 2004 Bonds"), to finance acquisition of the Project (as such term is defined in the Bond Resolution) and to pay certain expenses relating to the issuance of the Series 2004 Bonds including the cost of a municipal bond insurance policy relating to the Series 2004 Bonds; and

WHEREAS, all capitalized undefined terms used herein shall have the meanings ascribed thereto in the Bond Resolution; and

WHEREAS, the Issuer now desires to supplement the Bond Resolution to delegate, subject to the conditions hereinafter stated, to the Finance Director, the authority to fix the final details of the Series 2004 Bonds following a competitive sale to the winning qualified bidder on the basis of the lowest overall true interest cost rate as described in the Official Notice of Sale and Bidding Instructions attached hereto as Exhibit A, and to take certain other actions necessary for the issuance of the Series 2004 Bonds.

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

SECTION 1.

A. *Bids for the Series 2004 Bonds.* Bids for the public sale, by competitive bid, of the Series 2004 Bonds shall be received at the time and in the manner set forth in the Official Notice of Sale and Bidding Instructions, hereby approved as to substantially final form.

B. *Delegated Award and Payment for the Series 2004 Bonds.*

(1) The City hereby delegates to the Finance Director the authority (a) to determine (i) the dated date, (ii) the principal amount, (iii) the maturity dates and amounts, (iv) the interest rates, (v) the redemption features, if any, (vi) the amortization installments for the term bonds, if any, (vii) the delivery date, and (viii) all other details of the Series 2004 Bonds; and (b) to take such further action as shall be required for carrying out the purposes of the Bond Resolution all with respect to the Series 2004 Bonds.

(2) Subject to full satisfaction of the conditions set forth in this subparagraph (2) of this Section 1.B., the City hereby authorizes a delegated award of the Series 2004 Bonds to the successful bidder in accordance with the terms of the Official Notice of Sale and Bidding Instructions together with the Official Bid Form submitted by the successful bidder, with such changes, amendments, modifications, omissions and additions thereto as shall be approved by the Finance Director in accordance with the provisions of Section 1.B.(1) hereof and this subparagraph (2). The Official Bid Form (which is included as part of the Official Notice of Sale and Bidding Instructions) of the successful bidder shall not be accepted by the City until such time as he is in receipt of a properly delivered Official Bid Form to purchase the Series 2004 Bonds by the successful bidder, said offer to provide for, among other things, (i) the issuance of not exceeding \$10,000,000 aggregate principal amount of Series 2004 Bonds, (ii) an underwriting discount (including management fee and all expenses) and an original issue discount not in excess of 1%, in the aggregate, of the par amount of the Series 2004 Bonds, (iii) a true interest cost rate of not more than 5.0%, (iv) a final maturity of the Series 2004 Bonds not being later than thirty (30) years from the date of their issuance, and (v) a completed truth-in-bonding statement in compliance with Section 218.385, Florida

Statutes. In connection with awarding the Series 2004 Bonds to the lowest bidder, the City reserves the right to increase or decrease the principal amount per maturity and/or any amortization installment of the Series 2004 Bonds as further described in the Official Notice of Sale and Bidding Instructions. The award of the Series 2004 Bonds to the lowest qualified bidder and establishment of the final pricing terms and conditions shall be evidenced by the delivery of a Certificate of Finance Director to the City Clerk, the form of which is attached hereto as Exhibit B.

The Official Notice of Sale and Bidding Instructions may be modified and amended to accomplish the sale of the Series 2004 Bonds and the award of the sale of the Series 2004 Bonds to the best bidder in the all-or-none bidding transaction, based on the method which produces the lowest overall true interest cost rate for the City.

(3) The successful bidder shall make payment for the Series 2004 Bonds and accept delivery thereof as described in the Official Notice of Sale and Bidding Instructions.

C. *Publication of Notice of Sale.* The actions of the Finance Director to cause the Summary Notice of Sale of the Series 2004 Bonds attached as Exhibit C hereto, which is hereby approved in substantially final form, with such changes or insertions thereto as may be authorized by the Finance Director, such abbreviated form to be consistent with the terms of the Bond Resolution, to be published, in one or more newspapers or financial journals published within or without the State is hereby ratified, and such Summary Notice of Sale shall be published at such times as the Finance Director may determine; provided however, that at least one such publication shall be at least ten (10) days prior to the date of the bid opening. The Finance Director shall obtain proof, in affidavit form, of such publication. The Finance Director shall compare the notice as printed with that directed to be printed to ascertain that no material mistake has been made therein.

D. *Information with Respect to the Offering and Preliminary Official Statement.* The Finance Director is hereby authorized to prepare and mail (or cause to be prepared and mailed) copies of the Official Notice of Sale and Bidding Instructions to any banks, underwriters, investment houses or the like deemed to be advisable, and to enclose therewith copies of a Preliminary Official Statement substantially in the form attached hereto as Exhibit D. The Finance Director is authorized to deem final the Preliminary Official Statement prepared pursuant to this section for purposes of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission. The Finance Director is authorized to deliver a certificate to the winning bidder indicating compliance with such Rule. The Finance Director and the Financial Advisor are hereby further authorized and directed to cooperate with requests for information received from potential bidders or from the winning bidder.

E. *Approval of Preliminary Official Statement.* The City hereby approves the substantially final form and content of the Preliminary Official Statement attached hereto as

Exhibit D. The Chairman and the Finance Director are hereby authorized to execute on behalf of the City, the final Official Statement relating to the Series 2004 Bonds with such changes, insertions, omissions and filling of blanks in the Preliminary Official Statement as may be approved by the Chairman and the Finance Director, execution thereof to be conclusive evidence of such approval. Such Preliminary Official Statement and final Official Statement are hereby authorized to be used and distributed in connection with the marketing and sale of the Series 2004 Bonds.

SECTION 2. If the winning bid designates the Series 2004 Bonds to be insured by Financial Guaranty Insurance Company (the "Bond Insurer" with respect to the Series 2004 Bonds) in accordance with the commitment for insurance attached hereto as Exhibit E (the "Insurance Commitment"), the Series 2004 Bonds shall be so insured by a policy of municipal bond insurance (the "Bond Insurance Policy") issued by the Bond Insurer, the insurance premium to be paid by the winning bidder, to insure the holder of such Series 2004 Bonds of receiving the scheduled payment of principal and interest on behalf of the City. To the extent that the Bond Insurance Policy insures the Series 2004 Bonds and the Series 2004 Bonds remain Outstanding, a statement of insurance is hereby authorized to be printed on or attached to the Series 2004 Bonds for the benefit and information of the Series 2004 Bondholders, and furthermore, the City agrees to provide the information described below, to be directed to Financial Guaranty Insurance Company, 125 Park Avenue, New York, New York 10017, Attention: Risk Management: (a) notice of any material events as described pursuant to the Continuing Disclosure Certificate; (b) notice of the redemption, other than mandatory sinking fund redemption, of any of the Series 2004 Bonds, or of any advance refunding of the Series 2004 Bonds, including the principal amount, maturities and CUSIP numbers thereof; and (c) such additional information as the Bond Insurer may reasonably request from time to time. The Finance Director is hereby authorized to execute the Insurance Commitment.

SECTION 3. The Issuer hereby approves the form of the Continuing Disclosure Certificate attached hereto as Exhibit F. Subject to satisfaction of the conditions in Section 1.B.(2) hereof, the Chairman is hereby authorized and directed to execute and deliver, the Clerk is hereby authorized to attest and countersign under seal, and the City Attorney is hereby authorized to approve as to form, the Continuing Disclosure Certificate. The execution and delivery thereof in the manner described in the preceding sentence shall constitute complete approval of such Continuing Disclosure Certificate by the Issuer, including any changes to the form being approved, and shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein.

SECTION 4. Wells Fargo Bank, National Association, is hereby appointed Bond Registrar and Paying Agent relating to the Series 2004 Bonds. The form of Bond Registrar and Paying Agent Agreement relating to the Series 2004 Bonds is attached hereto as Exhibit G and is hereby approved and authorized. Subject to satisfaction of the conditions in Section 1.B.(2) hereof, the Chairman is hereby authorized and directed to execute and deliver, the Clerk is hereby authorized to attest and countersign under seal, and the City Attorney is hereby

authorized to approve as to form, the Bond Registrar and Paying Agent Agreement. The execution and delivery thereof in the manner described in the preceding sentence shall constitute complete approval of such Bond Registrar and Paying Agent Agreement by the Issuer, including any changes to the form being approved, and shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein.

SECTION 5. All prior resolutions of the Issuer inconsistent with the provisions of this resolution are hereby supplemented to conform with the provisions herein contained, and, except as otherwise supplemented hereby, shall remain in full force and effect.

SECTION 6. If any one or more of the covenants, agreements or provisions of this resolution should 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 separate from the remaining covenants, agreements or provisions of this resolution or of the Series 2004 Bonds issued hereunder.

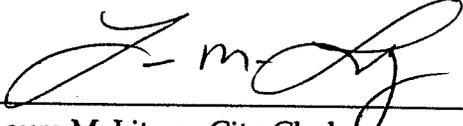
[Remainder of page intentionally left blank]

SECTION 7. 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 1st day of March, 2004.

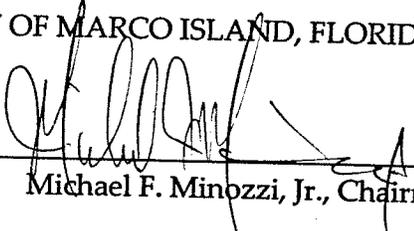
(SEAL)

ATTEST:



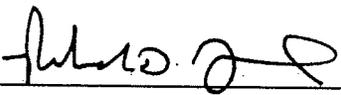
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Michael F. Minozzi, Jr., Chairman

Approved as to Form:



Richard D. Yovanovich, City Attorney