

RESOLUTION NO. 2003- 43

**A RESOLUTION FINDING THAT THE PURCHASE OF THE MARCO ISLAND/MARCO SHORES UTILITY SYSTEM FROM FLORIDA WATER SERVICES CORPORATION IS IN THE PUBLIC INTEREST**

**WHEREAS**, the Marco Island City Council has held an advertised public hearing on the proposed acquisition of the Florida Water Services Corporation (FWS) Marco Island/Marco Shores Utility System pursuant to Section 180.301, Florida Statutes; and

**WHEREAS**, the Marco Island/Marco Shores System provides water, wastewater, and reuse water to serve residential and business accounts within the corporate limits of Marco Island, Key Marco, Isles of Capri, and Hammock Bay; and

**WHEREAS**, the City of Marco Island adopted Ordinance No. 2003-13 declaring an urban service area to include property lying within the corporate boundary of the City and areas in adjacent unincorporated areas of Collier County currently served by the FWS system; and

**WHEREAS**, City Council has been provided with and has received the most recent available income and expense statement for FWS, the most recent available balance sheet for FWS listing assets, liabilities, amount of contributions-in-aid-of-construction, accumulated depreciation thereon and the existing rate base of the utility for regulatory purposes; and

**WHEREAS**, City Council has been provided with and has reviewed written reports and/or testimony concerning reports on the physical condition of the utility facilities to be purchased, including written reports prepared by Montgomery Watson Harza; and

**WHEREAS**, City Council has been provided with and has reviewed written reports and/or testimony regarding the reasonableness of the purchase price and contract terms, including analysis provided by a team headed by Rose, Sundstrom & Bentley, dated November 1, 1999; a Florida Water Services Corporation Water, Wastewater, and Reuse System Preliminary Valuation Report prepared by Public Resources Management Group, Inc. in 2002; a Marco Island and Marco Shores Water and Wastewater Due Diligence Report, prepared by Montgomery Watson Harza, dated August 2002, and the condemnation offer to purchase the FWS assets so as to demonstrate the reasonableness of the purchase price and the contract terms, including other information on the financial feasibility as to the financing of the proposed transaction; and

**WHEREAS**, the impacts of the purchase on utility customers have been carefully considered; and

**WHEREAS**, engineering reports provided to and reviewed by City Council indicates additional investment will be required for the Marco Island/Marco Shores Utility System, investments which the City as purchaser is able and willing to make; and

**WHEREAS**, City Council has carefully considered testimony of staff and the public as to the alternatives to purchase of the Marco Island/Marco Shores Utility System and the potential impact on utility customers if the contract for purchase is not approved and the purchase not made; and

**WHEREAS**, City Council has specifically considered the testimony of staff and the public that any alternative to the City purchase of the Marco Island/Marco Shores Utility System will have certain negative impacts on customers that are not present in a City purchase, while going forward with the purchase provides customers with accountability for rates and service which is not present in any other alternative; and

**WHEREAS**, City Council has also considered the testimony of staff and the public that establishes the ability of the purchaser to provide and maintain high-quality and cost-effective utility service, in light of the knowledge and information about the system, required additional investment and ability to accomplish such, the City's experience in operating and administering a sewer utility system, and management's previous experience in administering water and sewer utility systems; and

**WHEREAS**, City Council has reviewed the statements of the existing rate base of the utility for regulatory purposes; and

**WHEREAS**, City Council has considered the foregoing and additional testimony of staff, qualified engineering, financial, and legal consultants, and the general public at the advertised public hearing held on August 20, 2003.

**NOW, THEREFORE, BE IT RESOLVED BY THE MARCO ISLAND CITY COUNCIL**, in council duly assembled, as follows

**SECTION 1.**

The purchase of the Marco Island/Marco Shores Utility System by the City of Marco Island from FWS is in the public interest based on the written and oral testimony provided to City Council at the August 20, 2003 public hearing.

**SECTION 2.**

The financial information for the utility and the written reports and testimony presented to and considered by City Council, including the substantial information provided about the physical condition of the utility facilities being purchased, and the valuation report supports the reasonableness of the purchase contract price and terms. The price of \$85,313,143 due at closing for the Marco Island/Marco Shores systems is consistent with the range of values contained in the valuation reports. The contract terms in light of the lengthy negotiation process are also reasonable considering all of the circumstances.

**SECTION 3.**

The positive impacts to utility customers include local management and accountability for the utility systems, improved customer service, elimination of the private company's return on equity so as to redirect funds for the utility system, improving daily operations and maintenance through local control and administration, and providing for public determination of replacement, renewal and capital improvement programs. Moreover, purchase of the system will create positive impacts in financing and bonding funds for working capital and improvements through the use of tax-exempt bonds issued under the City of Marco Island's credit rating, and the integration of the existing sewer utility with the purchased Marco Island/Marco Shores Utility System will provide benefits for all public utility customers. Local control of the Marco Island/Marco Shores Utility System permits the long-term

planning and implementation of improvements in the system for the benefit of the people of Marco Island and adjacent areas.

#### **SECTION 4.**

Additional investment will be required to improve the operations of, and service to, customers of the Marco Island/Marco Shores Utility System. City Council is aware through written reports and testimony that critical capital projects will need to be included in the bonding that will pay for the transaction, and the City will address system improvements required to provide and maintain high-quality and cost-effective utility service. The City is willing to make the necessary investments in the system and is able to do so based on the cash flow analysis developed and refined over the past several years of negotiations, which specifically considered and concluded that cash flow from current revenues would support the necessary investment in renewal, replacement, and system improvements.

#### **SECTION 5.**

If the City of Marco Island does not purchase the Marco Island/Marco Shores Utility System, the utility will either remain in private control subject only to regulatory constraints, which constraints have proven over time to be costly, time-consuming, and not fully effective at guaranteeing high-quality service; or it may be sold to another public entity operated by appointed or elected officials who are not politically accountable directly to the customers of the Marco Island/Marco Shores Utility System. To the extent such public entities might be exempt from regulation, such disposition of the system may result in a complete loss of accountability with respect to rates or service. In fact, under certain past and pending proposals for public ownership, potential overpayment for the system would inevitably result in not only lack of control and accountability, but also in increased rates to compensate for overpayment.

#### **SECTION 6.**

Other testimony and information provided to City Council at the public hearing also clearly establishes that failure of the City to purchase the Marco Island/Marco Shores Utility System leaves the system subject to control by private or other public entities with or without meaningful or legal regulatory control and subject to potential use of Marco Island/Marco Shores Utility System revenues to subsidize other systems beyond the borders of the City of Marco Island and Collier County.

#### **SECTION 7.**

Testimony and information from the public hearing demonstrate that the City of Marco Island is capable of providing high-quality cost-effective service. Experience in utility operations, together with the demonstrated financial feasibility of acquisition and routine and capital improvements projects within the projected cash flow from current system revenue, strongly supports the ability of the City to provide and maintain high-quality and cost-effective utility service.

#### **SECTION 8.**

A previous contract was awarded to American Water Services by the Florida Governmental Utility Authority (FGUA) following a Request for Proposals to operate purchased FWS systems. To the extent that the City of Marco Island chooses to exercise its rights thereunder, the evidence

presented at the hearing establishes that American Water Services as a private provider operating certain FWS facilities on behalf of the City of Marco Island and subject to management and control by the City will meet all public interest requirements previously set forth as applicable to the City of Marco Island as purchaser of the Marco Island/Marco Shores Utility System. The evidence presented at the hearing also establishes that the current management of the City and available qualified personnel to be hired will allow "in-house" operations of the systems, and that City management and operations is in the public interest.

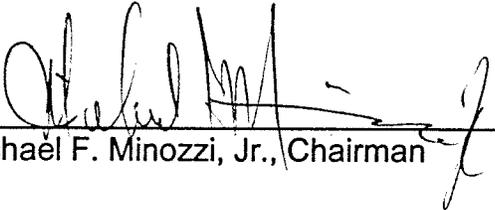
**SECTION 9.**

Based on the testimony and written evidence presented and considered at the public interest hearing as stated above, City Council hereby finds and determines that the purchase of the FWS Marco Island/Marco Shores Utility System assets by the City of Marco Island is in the public interest, on the basis of the reasons set forth above and reincorporated herein. Specifically, City Council finds and determines that local control of a local utility, with the accountability that comes from officials elected by the majority of the affected customers, advances all of the goals and objectives of public ownership of utility services; that the City's bonding capability, considered in view of cash flow information, establishes the long-term financial independence of the Marco Island/Marco Shores Utility System; that the City has demonstrated its ability to provide new services through experienced and qualified personnel employed therein and such record clearly indicates the ability to provide and maintain high-quality cost-effective utility services.

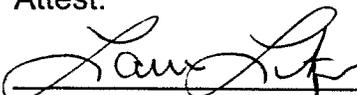
**SECTION 10.**

Accordingly, subject to timely delivery and final review of certain exhibits and appendices to the Utility System Asset Acquisition Agreement between the City of Marco Island and FWS, and further subject to submittal of an application for sale to the Collier County Water and Wastewater Authority for transfer to the City as a matter of right, the Marco Island City Council authorizes its City Manager to approve the final Agreement upon receipt of such additional documents and to then proceed in a timely manner to close the transaction.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 20<sup>th</sup> day of August 2003.

  
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Michael F. Minozzi, Jr., Chairman

Attest:

  
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Laura Litzan, City Clerk