

RESOLUTION NO. 2002- 02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, FINDING THAT THE ACQUISITION OF THE WATER AND WASTEWATER UTILITY ASSETS OF FLORIDA WATER SERVICES CORPORATION IS IN THE PUBLIC INTEREST; AUTHORIZING SUCH ACQUISITION THROUGH THE INITIATION OF A PROCEEDING IN EMINENT DOMAIN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island (the "City") is a Florida municipal corporation;
and,

WHEREAS, Article VIII Section 2(b) of the Constitution of the State of Florida provides that municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, pursuant to Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act" (the "Act"), the Legislature recognizes that, pursuant to the grant of power set forth in Section 2(b), Article VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act, other than those prohibited by law or preempted to a state or county government, and the provisions of the Act are to be construed so as to secure for municipalities the broad exercise of home rule powers granted by the Constitution; and,

WHEREAS, Part 4 of the Act provides all municipalities in the state with the authority to exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized under the Act; and,

WHEREAS, Section 166.411, Florida Statutes, provides that municipalities are authorized to exercise the power of eminent domain for certain uses including the use of water pipes and for sewerage and drainage purposes, water works, ponds and other municipal purposes and over other public or private lands whatsoever necessary to enable the accomplishment of the purposes listed in Section 180.06 Florida Statutes; and,

WHEREAS, Chapter 180, Florida Statutes, entitled, “Municipal Public Works,” and Section 180.06, Florida Statutes, in particular, authorizes municipalities to provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses; and to provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes; and,

WHEREAS, Florida Water Services Corporation (“Florida Water”) owns and operates the water and wastewater assets serving Marco Island, as well as assets outside of the City serving an area known as Marco Shores (the “Marco Island System”), which systems are interrelated for operations and management purposes; and,

WHEREAS, Florida Water, after having repeatedly informed the City that its water and wastewater assets were not for sale, and after having refused to discuss a negotiated sale of its assets with the City, has determined to offer those same assets for sale to interested third parties; and,

WHEREAS, based on the findings set forth below, the City has determined that it is a necessity, and in the public interest of the citizens of Marco Island, that the City own and control the Marco Island System, and it is the desire of the City Council of the City of Marco Island to satisfy that need by acquisition of the Marco Island System through the powers of eminent domain granted the City for such purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY

OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS. It is hereby found and determined that:

(A) Florida Water owns and operates the utility assets and utility system known as the Marco Island system within and without the incorporated limits of the City of Marco Island, as well as the Marco Shores system located just outside the incorporated limits of the City of Marco Island (collectively the "Marco Island System").

(B) Citizens and visitors to Marco Island rely entirely for their water supply on the utility system owned and operated by Florida Water. The water supply available on the Island comes from a brackish, poor quality source, and water customers must also rely a mainland source known as the Marco Pits, the water quality from which is poor and the supply limited. Florida Water has been cited in the past for exceeding the permitted capacity at the water plants serving the Island, and the Florida Department of Environmental Protection has, at times, refused to connect new customers to the water system due to inadequate water capacity. Engineering analysis has determined that the water treatment plants serving the City will run out of capacity by 2006

(C) Approximately one-third of the Island is served by central wastewater service provided by Florida Water. The balance of the Island is served by septic tanks, the use of which increases the potential to negatively impact the near shore waters quality on Marco Island. Protection of the Island's surface water quality, as well as its groundwater, is a critical component to the health, safety and welfare of the residents and visitors to Marco Island.

(D) Beginning in November 1999, the City undertook approximately two years of negotiations with Florida Water in an effort to reach a long term water agreement which would address issues critical to the City of Marco Island including future water supply, wastewater treatment, and increasing rates for water and wastewater consumers on the Island. Customers on

Marco Island pay among the highest water rates in Florida, and such rates are nearly twice those paid by nearby residents in the City of Naples and Collier County. Efforts to reach a long term water agreement with Florida Water ended in failure. After years of good faith efforts, the City has been unable to address the current and future needs of its citizens regarding water supply and treatment, and wastewater treatment and disposal, through either a negotiated acquisition of the assets serving the Island, or through a long term water agreement with Florida Water.

(E) The year 2000 was one of the driest calendar years on record throughout the State of Florida. The National Oceanic and Atmospheric Administration designated the Tampa Bay Area as in a period of "exceptional drought," with rainfall levels only two-thirds of normal amounts. Population growth on Marco Island, like other coastal areas in Florida, is among the highest in the United States. Along with climate conditions, growth places an increasing strain on water resources, and the ability to adequately provide for the needs of the City's residents and visitors. Increased pumping of existing sources results in saltwater intrusion, and pollution from additional development threatens water sources on the mainland.

(F) The underground utility infrastructure on Marco Island is, in many areas, approximately 30 years old. Over time, these pipes and other facilities deteriorate and must be repaired or replaced. It is in the public interest that repair, replacement and maintenance of the subsurface utility infrastructure continue in a manner which ensures compliance with all regulatory requirements and adequate service to customers on the Island. Water and wastewater treatment plants and appurtenant facilities must also be upgraded and expanded to meet the continued demand for service from existing and future customers on the Island. The failure of a long term water agreement with Florida Water leaves in doubt these important capital improvement projects.

(G) Florida local governments must meet the comprehensive planning requirements of

Part II, Chapter 163, Florida Statutes, which mandate that Florida counties and municipalities coordinate their plans for future growth within available sources of funding to ensure the availability of essential infrastructure. The provision of water and wastewater utilities is an element of such infrastructure coordination. Public ownership of Marco Island System will assist the City in meeting its statutory mandate to adopt a financially feasible utility element within its comprehensive plan.

(H) The City operates the Marco Island Sewer District, which provides central wastewater service to approximately 1000 residents on the Island. Wastewater treatment and disposal services are provided pursuant to a bulk service agreement with Florida Water. In the negotiations for a long term water agreement, Florida Water was unwilling to accept ownership and operational responsibility for the customers within the District. Ownership of the Marco Island System by the City would allow for consolidation, and therefore operational efficiencies and economies of scale, in the provision of wastewater services on the Island.

(I) Public ownership and control of the Marco Island System will provide an opportunity for the City to: (1) further develop a city-wide approach to the comprehensive supply, distribution, and treatment of water and the collection, treatment and disposal of wastewater; (2) achieve economies of scale relative to utility operations, maintenance, customer service and management; (3) provide current and future users of the Marco Island System with cost efficient services at appropriate, stabilized levels of rates and charges; (4) provide for the operation and maintenance of water and wastewater facilities in a proactive and environmentally responsible manner; (5) provide for the construction of future facilities in a long term, cost effective manner; and (6) provide an opportunity for expansion and extension of utility facilities in a manner consistent with the City's comprehensive plans.

(J) The system serving the residents of Marco Shores is integrated in certain respects with the system serving Marco Island. To the extent the Marco Shores system is necessary to the provision of water and wastewater service to Marco Island, and in so far as it may be in the best interest of customers of the Marco Shores system that the two systems remain in common ownership, the City will proceed in a manner which includes all such assets in the acquisition.

SECTION 2. ACQUISITION OF MARCO ISLAND SYSTEM. The City Council of the City of Marco Island hereby agrees to and authorizes the acquisition of the Marco Island System through the powers of eminent domain granted the City for such purposes. The City Manager is hereby directed to take such action and do all things as he deems necessary and appropriate to such acquisition including, but not limited to, working with the City Attorney and others to file and prosecute a Petition in Eminent Domain in Circuit Court, Collier County, Florida. Such Petition shall include those assets within and without the corporate boundary of the City, which are found to be necessary to the provision of water and wastewater service to the City, and shall include the system serving the residents of Marco Shores.

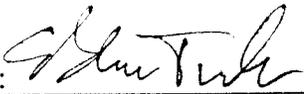
SECTION 3. DETERMINATION OF PUBLIC PURPOSE AND BENEFIT. Based upon the legislative findings incorporated in Recitals and Section 1 of this Resolution, the Council hereby determines that the provision of water and wastewater services through facilities owned by the City constitutes a paramount public purpose and is in the best interest of the health, safety and welfare of the City and the ratepayers of the Marco Island System. The City's acquisition of the Marco Island System will provide a greater public use, increased public benefit, and satisfy the needs of the residents and visitors to Marco Island for an adequate and secure quality and quantity of potable water and wastewater service than that provided by Florida Water. The City possesses the power and authority pursuant to the Florida Constitution, Florida Statutes and City Charter to

acquire the Marco Island System owned by Florida Water by the use of eminent domain.

SECTION 5. EFFECTIVE DATE. This Resolution becomes effective immediately upon its adoption.

PASSED AND DULY ADOPTED at the meeting of the City Council of the City of Marco Island on the 19th day of February, 2002.

**CITY COUNCIL OF THE CITY OF
MARCO ISLAND**

BY: 
E. Glenn Tucker, Council Chairman

ATTEST:


A. William Moss, City Manager/City Clerk