ORDINANCE NO. 2013-82

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA; AMENDING CHAPTER 94 ENTITLED "WATER AND SEWERS", ARTICLE IV. PROCEDURES FOR WATER AND SEWER SERVICES, DIVISION 4. RATES, FEES AND CHARGES, OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA, AND IN PARTICULAR, BY ADOPTING AND CREATING A NEW SECTION, HIALEAH CODE § 94-163 ENTITLED "WATER AND WASTEWATER PAYMENT IN LIEU OF FRANCHISE FEES"; PROVIDING A SHORT TITLE; PROVIDING FINDINGS AND INTENT; REPEALING ALL ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1. Title. This Ordinance shall be entitled and may be referred to as the "Hialeah Water and Wastewater Payment in Lieu of Franchise Fee Ordinance," the provisions of which shall be incorporated into the Code of Ordinances, City of Hialeah, Florida (hereafter "Code").

Section 2. City Findings and Intent. In adopting this Ordinance and these amendments to the Code of Ordinances of the City of Hialeah, Florida (the "Code"), the Mayor and City Council of the City of Hialeah (the "Mayor and Council") hereby makes and expresses the following findings, purposes and intent:

(1) This Ordinance is enacted pursuant to all general and special law authority of the City of Hialeah (the "City") including its home rule powers, for the purpose of providing for the necessary provision, extension, expansion, operation, management, maintenance, and regulation (collectively "control") of potable water and wastewater service to the citizens and customers of the City's combined potable water and wastewater systems (collectively the "City System").

(2) To protect water resources, prevent sprawl, implement water and wastewater service concurrency, enable financing of City facilities, and provide for the most cost effective an environmentally acceptable central water and wastewater facilities, the City has previously established a just and equitable system to adequately generate the revenues necessary to meet

the projected fiscal requirements of the Water and Wastewater Utility System on an equitable basis to all classes or users.

(3) The City is authorized by Chapters 166 and 180, Florida Statutes, and other relevant provisions of state law, to adopt all necessary rates, fees, and charges consistent with state law.

(4) The City has full and exclusive authority over the management, operation, and control of its Water and Wastewater Utility System and the authority to prescribe rules and regulations governing the use of such facilities whenever such are provided by the City, and to make such changes from time to time in such rules and regulations as it deems necessary.

(5) The Water and Wastewater Utility System utilizes a variety of city services and facilities, including City rights of way and easements, for which the utility has thus far received the benefits thereof for free.

(6) The City holds the public rights-of-way within its boundaries in trust on behalf of its citizens and has a duty to recover for the benefit of its taxpayers the cost of maintaining the rights of way and obtaining value for the use of the rights of way and other city property.

(7) The City is entitled to collect a payment in lieu of a franchise fee in return for the use and occupation of the rights-of-way and public lands within the city for the construction, ownership, operation and maintenance of water and wastewater lines and associated facilities.

(8) The City is entitled to levy a payment in lieu of taxes from tax-exempt utilities that are not otherwise contributing for the payment of municipal services provided to them at no cost.

(9) The City is permitted to achieve a reasonable rate of return on its utility operations and use such revenues for the benefit of all its taxpayers.

(10) The City has provided the required public notice and held the necessary public hearing(s) in order to adopt these charges.

(11) It is the intention of the Mayor and Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Hialeah, Florida, and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 3. Creation and Adoption of New Section, Hialeah Code § 94-163.

Chapter 94 entitled "Water and Sewers", Article IV. Procedures for Water and Sewer Services, Division 4. Rates, Fees and Charges, of the Code of Ordinances of the City of Hialeah,

Florida is hereby amended, by adding a new section, Hialeah Code § 94-163 entitled "Water and Wastewater Payment in Lieu of Franchise Fee", to read as follows:

Chapter 94

WATER AND SEWERS

* * *

ARTICLE IV. PROCEDURES OF WATER AND SEWER SERVICES

* * *

DIVISION 4. RATES, FEES AND CHARGES

* * *

Sec. 94-163. Water and wastewater payment in lieu of franchise fee.

The city hereby adopts a water and wastewater payment in lieu of franchise fee applicable to all sales of water and wastewater service by the city equal to 10% of the bi-monthly rates, fees, and charges (including base facility and consumption rates) from the sale of water and wastewater service to customers of the city's water and wastewater system. The city's water and wastewater utility will budget and transfer to the general fund this payment in lieu of franchise fee on a monthly basis.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as

abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: **Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: **Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 26 day of November, 2013.

Isis Garcia-Martinez,
Council President

Attest:

Approved on this 2 day of Dec, 2013.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

Ordinance was adopted by a 6-0-1 vote with Council Members, Garcia-Martinez, Casals-Munoz, Caragol, Gonzalez, Hernandez and Lozano voting "Yes", Council Member Cue-Fuente was absent.

~~Strkethrough~~ indicates deletion. Underline indicates addition.

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