RESOLUTION NO. 2013-122

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE AND FINANCING OF CERTAIN COMPUTER SOFTWARE AND RELATED SERVICES FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSCATIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Hialeah, as Borrower ("Borrower") is a local government unit of the State of Florida, is authorized by the laws of the State of Florida to purchase and acquire personal property (whether tangible or intangible) for the benefit of the Borrower and its residents and to enter into installment purchase contracts with respect thereto; and

WHEREAS, the Borrower desires to purchase and acquire certain computer software and related services on an installment purchase basis constituting personal property necessary for the Borrower to perform essential governmental functions; and

WHEREAS, in order to acquire such computer software and related services, the Borrower proposes to enter into that certain Installment Purchase Agreement ("Agreement") with PNC Equipment Finance, LLC, as Lender ("Lender"), the form of which has been presented to the governing body of the Borrower at this meeting; and

WHEREAS, the City Council of the City of Hialeah deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement for the purchase and acquisition of the computer software and related services on an installment purchase basis therein described on the terms and conditions therein provided.

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

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are incorporated and adopted by reference as if fully set forth herein.

Section 2: **Approval of Documents.** The form, term and provisions of the Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by the Mayor of the Borrower, the execution of such document being conclusive evidence of such approval; and the Mayor of the Borrower is hereby authorized and directed, the Agreement and any related exhibits attached thereto.

Section 3: **Other Actions Authorized.** The officers and employees of the Borrower shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance and Pay Proceeds Certificate contemplated in the Agreement, including appropriate arbitrage certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 4: **No General Liability.** Nothing contained in this Resolution, the Agreement or any other instrument shall be construed with respect to the Borrower as incurring a pecuniary liability or charge upon the general credit of the Borrower or against its taking power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Borrower or any charge upon its credit or against its taking power.

Section 5: **Appointment of Authorized Borrower Representatives.** The Mayor and the Chief Information Officer of the Borrower are hereby designated to act as authorized representatives of the Borrower for purposes of the Agreement until such time as the City

Council of the City of Hialeah shall designate any other or different authorized representative for purposes of the Agreement.

PASSED AND ADOPTED this 26 day of November, 2013.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 27 day of November, 2013.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Resolution 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.

INSTALLMENT PURCHASE AGREEMENT

THIS INSTALLMENT PURCHASE AGREEMENT is made and entered into on November ____, 2013, between PNC EQUIPMENT FINANCE, LLC, as Lender, whose mailing address is 995 Dalton Avenue, Cincinnati, Ohio 45203, and City of Hialeah, as Borrower, whose mailing address is 501 Palm Avenue, 2nd Floor, Hialeah, FL 33010.

For and in consideration of the mutual promises and agreements herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS:** Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

"Acceptance and Pay Proceeds Certificate" means a certificate in substantially the form attached hereto as *Exhibit C* and which shall be delivered by Borrower to Lender upon receipt and acceptance of the Software as provided in Paragraph 8 hereof.

"Additional Payments" means any amounts (other than Installment Payments) required to be paid by Borrower pursuant to the terms of this Agreement.

"Agreement" means this Installment Purchase Agreement, as supplemented and amended from time to time in accordance with Paragraph 29 hereof.

"Borrower" means the entity referred to as Borrower in the first paragraph of this Agreement.

"Code" means the Internal Revenue Code of 1986. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

"Dated Date" means the date hereinabove first written.

"Event of Default" is defined in Paragraph 22 hereof.

"Event of Nonappropriation" means a nonrenewal of the term of this Agreement by Borrower, determined by the failure or refusal of the governing body of Borrower to appropriate moneys sufficient to pay the Installment Payments and reasonably estimated Additional Payments for the next succeeding Renewal Term as provided herein.

"Fiscal Period" means the annual or biennial period used from time to time by Borrower for its financial accounting and budgeting purposes. Borrower's current Fiscal Period is set forth in *Exhibit A* attached hereto.

"Initial Term" means the period from the Dated Date to midnight of the last day of Borrower's current Fiscal Period.

"Installment Payments" means the amounts (allocable to a principal component and an interest component) payable by Borrower pursuant to Paragraph 4 hereof, as payments for the Purchase Price for the Software and Software Services as set forth in *Exhibit B* attached hereto.

"Legally Available Funds" means funds that the governing body of Borrower duly appropriates or are otherwise legally available for the purpose of making Payments under this Agreement.

"License Agreement" means a licensing agreement relating to the Software between Vendor and Borrower.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Payments" means the Installment Payments and the Additional Payments, collectively.

"Purchase Option Price" means the price determined pursuant to Paragraph 6 hereof at which Borrower may purchase from Lender all of the Software and Software Services on any Installment Payment date prior to the scheduled payment of all Installment Payments to be paid hereunder for the Software and Software Services.

"Purchase Price" means the total cost of the Software and Software Services, including all delivery charges, installation charges, legal fees and financing costs and otherwise incurred in connection with the financing provided by the installment purchase of the Software and Software Services as herein provided.

"Renewal Term" means each successive period, in addition to the Initial Term, that is coextensive with Borrower's Fiscal Period and for which Borrower has extended the term of this Agreement as provided in Paragraph 3 hereof.

"Lender" means (a) the entity referred to as Lender in the first paragraph of this Agreement or (b) any assignee or transferee of any right or interest of Lender in and to this Agreement (including Installment Payments) pursuant to Paragraph 25 hereof, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lender to perform hereunder.

"Software" means the licensed computer software products identified in *Exhibit A* hereto and all replacements, modifications, upgrades and enhancement releases thereof or thereto made pursuant to the License Agreement.

"Software Services" means the information technology services related to installation, migration and implementation of the Software, identified in *Exhibit A* hereto.

"*State*" means the State identified in *Exhibit A* attached hereto.

"*Vendor*" means the licensor under the License Agreement and supplier of the Software and the Software Services.

2. **AGREEMENT TO PURCHASE SOFTWARE AND SOFTWARE SERVICES ON AN INSTALLMENT BASIS:** Lender hereby agrees to acquire and purchase, on Borrower's behalf, all the Software and Software Services from the Vendor and Lender agrees to sell and transfer to Borrower and Borrower agrees to purchase from Lender the Software and Software Services.

3. **TERM:** The Initial Term shall commence as of the Dated Date and expire at midnight on the last day of Borrower's current Fiscal Period. Beginning at the expiration of the Initial Term, the term of this Agreement shall automatically be extended upon the successive appropriation by Borrower's governing body of amounts sufficient to pay Installment Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term in the number of Renewal Terms, each coextensive with Borrower's Fiscal Period, as are necessary for all Installment Payments identified on *Exhibit B* hereto to be paid in full, unless this Agreement is terminated as provided in Paragraph 23 hereof.

The term of this Agreement will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, (b) the day after the last scheduled Installment Payment shown on *Exhibit B* hereto is paid in full, (c) the day after the Purchase Option Price is paid in full pursuant to Paragraph 6 hereof, except as otherwise therein provided, or (d) an Event of Default and a termination of Borrower's rights under this Agreement as provided in Paragraph 23 hereof.

4. **INSTALLMENT PAYMENTS:** Borrower hereby agrees to pay Installment Payments for the Software and Software Services from and after the Dated Date (but only from Legally Available Funds) to Lender at Lender's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 25 hereof) in the amounts and on the dates specified in *Exhibit B* attached hereto. Installment Payments made by check will be accepted subject to collection.

Borrower's obligation to make Installment Payments and to pay any Additional Payments payable under this Agreement constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Borrower has not pledged its full faith and credit or its taxing power to make any Installment Payments or any Additional Payments under this Agreement, and Borrower shall not permit any person or entity (including the federal government) to guarantee any Installment Payments under this Agreement. Neither Lender nor any assignee may compel the levy of any ad valorem taxes by Borrower to pay Installment Payments or any other amounts due under this Agreement.

5. **AGREEMENT TO SEEK APPROPRIATIONS; NOTICE OF EVENT OF NONAPPROPRIATION:** Borrower, being a state or political subdivision thereof, is dependent upon receiving continued appropriations or other Legally Available Funds to continue this Agreement for the full term. Notwithstanding any provision to the contrary in this Agreement,

Borrower may terminate this Agreement at the end of any Fiscal Period of Borrower if sufficient funds are not appropriated by Borrower's governing body to pay Installment Payments and other amounts due under the Agreement during the next succeeding Fiscal Period. Borrower hereby agrees to notify Lender immediately of the occurrence of an Event of Nonappropriation.

6. **PURCHASE OPTION:** Borrower is hereby granted the option to purchase the Software and Software Services (in whole but not in part), prior to the scheduled payment of the Installment Payments in full pursuant to this Agreement, on each Installment Payment date at a price equal to the Purchase Option Price (assuming all Installment Payments and Additional Payments otherwise due on that date have been paid) shown for the Installment Payment date on which such purchase is to be effective under the column titled "PURCHASE OPTION PRICE" on *Exhibit B* hereto. To exercise the option granted under this Paragraph 6, Borrower shall give Lender a written notice exercising such option and designating the Installment Payment date on which such purchase is to be effective and the applicable Purchase Option Price, which notice shall be delivered to Lender at least thirty (30) days in advance of the proposed purchase date. The purchase option herein granted may be exercised by Borrower whether or not one or more Events of Default have occurred and are then continuing at the time of such exercise; *provided, however,* that the purchase of the Software and Software Services upon the exercise of such option during the continuance of an Event of Default shall not limit, reduce or otherwise affect liabilities or obligations that Borrower has incurred as a result of such Event of Default or otherwise terminate the term of this Agreement notwithstanding anything in this Agreement to the contrary.

7. **ESSENTIALITY:** Borrower's present intention is to make Installment Payments and Additional Payments for the Initial Term and all Renewal Terms as long as it has Legally Available Funds. In that regard, Borrower represents that (a) the use and operation of the Software and the purchase of the Software Services are essential to its proper, efficient and economic operation and (b) the functions performed by the Software could not be performed by other computer software available for its use. Borrower does not intend to sell or otherwise dispose of the Software or any interest therein (which can be done only in accordance with the provisions of the License Agreement) prior to the last Installment Payment (including all Renewal Terms) scheduled to be paid hereunder.

8. **DELIVERY AND INSTALLATION:** Borrower shall select the type, quantity and the Vendor of the Software and the Software Services designated in *Exhibit A* hereto and shall order such Software and Software Services for purposes of this Agreement from such supplier. Lender shall have no liability for any delay in delivery or failure by the supplier to deliver any Software or Software Services or to fill any purchase order or meet the conditions thereof. Borrower, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Software. As soon as practicable after receipt of the Software, Borrower shall furnish Lender with an Acceptance and Pay Proceeds Certificate. Execution of the Acceptance and Pay Proceeds Certificate by any employee, official or agent of Borrower having authority in the premises or having managerial, supervisory or procurement duties with respect to computer software of the same general type as the Software shall constitute acceptance of the Software on behalf of Borrower. Regardless of whether Borrower has furnished an Acceptance and Pay Proceeds Certificate pursuant to this Paragraph 8, by making an Installment Payment after its

receipt of the Software pursuant to this Agreement, Borrower shall be deemed to have accepted the Software on the date of such Installment Payment for purposes of this Agreement. All Installment Payments paid prior to delivery of the Acceptance and Pay Proceeds Certificate shall be credited to Installment Payments as they become due as shown on the Installment Payment Schedule attached as *Exhibit B* hereto.

Borrower understands and agrees that neither the manufacturer, Lender or supplier of any Software or Software Services, nor any salesman or other agent of any such manufacturer, Lender or supplier, is an agent of Lender. No salesman or agent of the manufacturer, Lender or supplier of any Software or Software Services is authorized to waive or alter any term or condition of this Agreement, and no representation as to Software or Software Services or any other matter by the manufacturer, Lender or supplier of any Software or Software Services shall in any way affect Borrower's duty to pay the Installment Payments and perform its other obligations as set forth in this Agreement. Borrower hereby acknowledges that it has or will have selected the Software and Software Services identified on *Exhibit A* hereto using its own criteria and not in reliance on any representations of Lender.

9. **DISCLAIMER OF WARRANTIES:** LENDER, NOT BEING THE MANUFACTURER, LENDER OR SUPPLIER OF ANY OF THE SOFTWARE OR THE SOFTWARE SERVICES, NOR A DEALER IN ANY OF SUCH SOFTWARE OR SOFTWARE SERVICES, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE SOFTWARE OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE SOFTWARE, THE QUALITY OR CAPACITY OF THE SOFTWARE, THE QUALITY OF THE SOFTWARE SERVICES PROVIDED, THE WORKMANSHIP IN THE SOFTWARE, COMPLIANCE OF THE SOFTWARE WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. Borrower accordingly agrees not to assert any claim whatsoever against Lender based thereon. Borrower further agrees, regardless of cause, not to assert any claim whatsoever against Lender for any direct, indirect, consequential, incidental or special damages or loss, of any classification. Other than the provision of the Software Services in accordance with this Agreement, Lender shall have no obligation to install, erect, test, adjust, service or maintain any Software. Borrower shall look solely to the manufacturer, Lender and/or supplier for any and all claims related to the Software and Software Services. BORROWER ACQUIRES AND PURCHASES THE SOFTWARE "WHERE-IS, AS IS" AND "WITH ALL FAULTS."

Lender hereby acknowledges that the warranties of the manufacturer, Lender and/or supplier of the Software or the Software Services, if any, are for the benefit of Borrower.

10. **LICENSE FOR SOFTWARE; NO TITLE; COVENANT REGARDING SOFTWARE SERVICES:** (a) During the term of this Agreement, Borrower shall have a non-exclusive license (either perpetual or for a stated term that expires later than the last scheduled Installment Payment date under this Agreement) to use the Software pursuant to the terms of the License Agreement, unless Lender terminates this Agreement pursuant to Paragraph 23 hereof or an Event of Nonappropriation occurs, in which event Lender shall be entitled to exercise its rights and remedies as provided in Paragraph 23 hereof. Upon Borrower's payment in full of the last scheduled Installment Payment shown on *Exhibit B* hereto or the payment in full of the Purchase

Option Price, Borrower shall acquire a permanent unencumbered right to use the license in accordance with the terms of the License Agreement.

(b) Borrower hereby covenants and agrees to obtain Software Services that are necessary or advisable to operate and maintain the Software for Borrower's purposes as provided in this Agreement.

11. **TAX COVENANTS; TAX INDEMNITY PAYMENTS:** Borrower agrees that it will not take any action that would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

Borrower represents that neither Borrower nor any agency or unit of Borrower has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Software or the Software Services. Borrower has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly Installment Payments under this Agreement.

If Borrower breaches the covenant contained in this Paragraph, the interest component of Installment Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Borrower agrees to pay promptly after any such determination of taxability and on each Installment Payment date thereafter to Lender an additional amount determined by Lender to compensate such owner or owners for the loss of such excludability (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

It is Lender's and Borrower's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lender's and Borrower's intention that Borrower be considered the owner of the Software (subject to the License Agreement) for federal income tax purposes.

12. **USE OF SOFTWARE, INSPECTION AND REPORTS:** During the term of this Agreement, Borrower shall be entitled to quiet enjoyment of the Software and may possess and use the Software in accordance with this Agreement and the License Agreement, provided that Borrower is in compliance in all respects with the terms of this Agreement and the License Agreement and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements or warranties of the manufacturer, Lender and/or supplier with respect to the Software. Borrower shall provide all permits and licenses, if any, necessary for the installation and operation of the Software. Lender shall have the right, upon reasonable prior notice to Borrower, during regular business hours and subject to Borrower's security procedures, to inspect the Software at the premises of Borrower or wherever the Software may be located.

During the term of this Agreement and at Lender's request, Borrower shall provide Lender, no later than ten days prior to the end of each Fiscal Period (commencing with the Borrower's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Borrower's ability to continue the term of this Agreement for the next succeeding Renewal Term as may be reasonably requested by Lender.

During the term of this Agreement, Borrower shall furnish or cause to be furnished to Lender, at Borrower's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Borrower as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Borrower's auditor.

13. **RISK OF LOSS:** All risk of loss, damage, theft or destruction to each item of Software shall be borne by Borrower. No such loss, damage, theft or destruction of the Software, in whole or in part, shall impair the obligations of Borrower hereunder (including, but not limited to, the obligation to pay Installment Payments when due), all of which shall continue in full force and effect subject to the terms of this Agreement. If (a) the Software or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) the temporary use of, the Software or any part thereof is taken under the exercise of the power of eminent domain, Borrower shall immediately notify Lender. Borrower and Lender shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lender's option, to (i) the prompt restoration or replacement of the Software or (ii) the payment in full of the then applicable Purchase Option Price. Any balance of Net Proceeds remaining after completion of such work or payment of such Purchase Option Price shall be paid promptly to Borrower. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Purchase Option Price in full, Borrower shall, at Lender's direction, either complete the work or pay the then applicable Purchase Option Price in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

14. **INSURANCE:** In the event that Borrower is not self-insured as hereinafter provided, Borrower, at its expense, shall throughout the term of this Agreement keep the facilities at which the Software is located insured against theft, fire and such other risks as may be customary in the amounts and for the coverage set forth in *Exhibit E* hereto, with carriers acceptable to Lender, under a policy or policies containing a loss payable endorsement in favor of Lender, and affording to Lender such additional protection as Lender shall reasonably require. The policies required hereby shall provide that they may not be canceled or materially altered without at least 30 days prior written notice to Lender. Borrower shall deliver to Lender copies or other evidence satisfactory to Lender of each insurance policy and each renewal thereof. Failure by Lender to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. Lender shall have the right, on behalf of itself and Borrower, to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under said insurance policies. If Borrower is self-insured with respect to the facilities at which the Software is located, Borrower shall maintain during the term of this Agreement an actuarially

sound self-insurance program in form satisfactory to Lender and shall provide evidence thereof in form and substance satisfactory to Lender.

15. **MAINTENANCE:** Borrower shall use the Software in a careful and proper manner, in compliance with all applicable laws and regulations and the License Agreement and, at its expense, keep and maintain the Software in good operating condition, performing all maintenance and servicing necessary, including installation of any updates or upgrades thereto to the maintain the Software. Without the prior written consent of Lender and subject to the License Agreement, Borrower shall not make any alterations or modifications to the Software.

16. **TAXES:** Unless Borrower has provided Lender with evidence necessary to sustain an exemption therefrom, Borrower shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lender or Borrower, now or hereafter imposed by any governmental body or agency on or relating to the Software or Software Services, the Installment Payments or the use, shipment, delivery, ownership or operation of the Software and on or relating to this Agreement; *provided, however,* that the foregoing shall not include any federal, state or local income or franchise taxes of Lender.

17. **LENDER'S PERFORMANCE OF BORROWER'S OBLIGATIONS:** If Borrower shall fail to duly and promptly perform any of its obligations hereunder, Lender may, at its option, perform any act or make any payment that Lender deems necessary for the maintenance and preservation of the Software and Lender's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lender in performing such acts and all such payments made by Lender together with late charges as provided in Paragraph 18 below, and any reasonable legal fees incurred by Lender in connection therewith, shall be payable by Borrower to Lender on demand, but only from Legally Available Funds. The performance of any act or payment by Lender as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Borrower.

18. **INTEREST ON DELINQUENT INSTALLMENT PAYMENTS; LATE CHARGES:** Should Borrower fail to duly pay any part of any Installment Payment or other sum to be paid to Lender hereunder (including, but not limited to, any amounts due as a result of Lender's exercise of its rights under Paragraph 23 hereof) on the date on which such amount is due hereunder, then Borrower shall pay to Lender (a) interest on such delinquent payment from the due date thereof until paid at the rate of 12% per annum or the highest rate permitted by law, whichever is less, and (b) a late charge equal to five percent (5%) of such overdue amount, limited, however, to the maximum amount allowed by law; *provided, however,* that any such amounts shall be payable solely from Legally Available Funds.

19. **INDEMNIFICATION:** To the extent permitted by State law, Borrower assumes liability for, agrees to and does hereby indemnify, protect and hold harmless Lender and its agents, employees, officers, directors, parents, subsidiaries and stockholders from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees), of whatsoever kind and nature, arising out of (i) the use, condition (including, but not limited to, latent and other defects and whether or

not discoverable by Borrower or Lender), operation, ownership, selection, delivery, storage, leasing or return of any item of Software regardless of where, how and by whom operated, or (ii) any failure on the part of Borrower to accept the Software or Software Services or otherwise to perform or comply with any conditions of this Agreement or the License Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement. Notwithstanding anything herein to the contrary, any indemnity amount payable by Borrower pursuant to this Paragraph 19 shall be payable solely from Legally Available Funds and only to the extent authorized by law.

20. **NO OFFSET; UNCONDITIONAL OBLIGATION:** This Agreement is "triple net" and Borrower's obligation to pay all Installment Payments and Additional Payments hereunder shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Borrower shall not be entitled to any abatement of installment payments or reduction thereof or setoff against installment payments, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of Borrower against Lender hereunder or otherwise; nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lender or Borrower be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Software from whatsoever cause, the taking or requisitioning of the Software by condemnation or otherwise, the lawful prohibition of Borrower's use of the Software, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or the License Agreement, or lack of right, power or authority of Lender to enter into this Agreement or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lender or Borrower or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Installment Payments and Additional Payments payable by Borrower hereunder shall continue to be payable in all events unless the obligation to pay the same shall expire or be terminated pursuant hereto (including upon the occurrence of an Event of Nonappropriation). To the extent permitted by applicable law, Borrower hereby waives any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Agreement or any of the items of Software or Software Services except in accordance with the express terms hereof.

21. **REPRESENTATIONS AND WARRANTIES OF BORROWER:** Borrower hereby represents and warrants to and agrees with Lender that:

(a) Borrower is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.

(b) Borrower has the power and authority under applicable law to enter into the transactions contemplated by this Agreement and has been duly authorized to execute and deliver this Agreement and to carry out its obligations hereunder. Attached hereto as *Exhibit F* is a full, true and correct copy of a resolution or other appropriate official action of Borrower's governing body specifically authorizing Borrower to execute and deliver this Agreement. Attached hereto as *Exhibit G* is a full, true and correct copy of an

Incumbency Certificate relating to the authority of the officers who have executed and delivered this Agreement on behalf of Borrower, and attached hereto as *Exhibit H* is a full, true and correct copy of an opinion of Borrower's legal counsel regarding the legal, valid and binding nature of this Agreement on Borrower and certain other related matters.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement, and Borrower has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement, including with respect to entering into the License Agreement and purchasing the Software Services.

(d) Borrower is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Borrower from entering into this Agreement or the License Agreement or performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Borrower, nor to the best knowledge of Borrower is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or the License Agreement or any other agreement or instrument to which Borrower is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Borrower of this Agreement or in connection with the carrying out by Borrower of its obligations hereunder and thereunder have been obtained.

(f) The payment of the Installment Payments or any portion thereof is not (under the terms of this Agreement or any underlying arrangement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Borrower) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Software will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Purchase Price for the Software or Software Services will be used, directly or indirectly, to make or finance loans to any person other than Borrower. Borrower has not entered into any management or other service contract with respect to the use and operation of the Software or the facilities at which the Software is located.

(g) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Borrower or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or

other encumbrance upon any assets of Borrower or on the Software pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Borrower is a party or by which it or its assets may be bound.

(h) Borrower is acquiring the Software for use within its geographical boundaries.

(i) The useful life of the Software will not be less than the stated full term of this Agreement.

(j) Borrower has entered into this Agreement for the purpose of purchasing and acquiring the Software and the Software Services and not for the purpose of refinancing any outstanding obligation of Borrower more than 90 days in advance of its payment or prepayment date. The Purchase Price for the Software and Software Services will be paid directly by Lender to the manufacturer, Lender or supplier thereof, and no portion of the Purchase Price for the Software and Software Services will be paid to Borrower as reimbursement for any expenditure paid by Borrower more than 60 days prior to the execution and delivery of this Agreement.

(k) Borrower has made sufficient appropriations or has other Legally Available Funds to pay all Installment Payments due during the Initial Term.

(l) Borrower has not previously failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation.

(m) Software Services purchased from funds advanced by Lender to Vendor thereof pursuant to this Agreement would be capitalizable for federal income tax purposes if Borrower were to be treated as a corporation for federal income tax purposes.

(n) Based upon information that Borrower has obtained from Vendor, the amounts to be paid to Vendor in consideration for any portion of the Software Services that represents software maintenance, warranty service upgrades and 2-year or 3-year extended hardware warranty (collectively, the *"Prepaid Services"*) in a lump sum prior to the date that Vendor may be required to perform any such Prepaid Services are made solely and exclusively for an extended warranty with respect to personal property or updates or maintenance with respect to computer software. Based on information that Borrower has obtained from Vendor, the same extended warranty, updates or maintenance are regularly provided to nongovernmental persons on the same terms.

(o) Borrower will use the Software in accordance with the License Agreement.

22. **EVENTS OF DEFAULT:** Each of the following events constitutes an "Event of Default" hereunder:

(a) Borrower fails to pay in full the Installment Payment due on any date upon which such Installment Payment is due other than as a result of an Event of Nonappropriation;

(b) Borrower fails to comply with any other agreement or covenant of Borrower hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;

(c) Borrower institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Borrower or any of its property;

(d) any warranty, representation or statement that Borrower made in writing in connection with this Agreement is found to be incorrect or misleading in any material respect on the date made;

(e) actual or attempted sale, lease or encumbrance of any of the Software or the making of any levy, seizure or attachment thereof or thereon; or

(f) Borrower fails to operate the Software pursuant to the terms of the License Agreement or the License Agreement is terminated by the licensor thereunder for any reason.

23. **LENDER'S RIGHTS UPON EVENT OF DEFAULT OR EVENT OF NONAPPROPRIATION:** Immediately upon the occurrence of an Event of Default or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lender may terminate this Agreement or Borrower's rights hereunder, including Borrower's right to use the Software and obtain Software Services, and shall send notice thereof to Borrower and Vendor. Upon the receipt of such notice, Borrower agrees to cease and discontinue immediately the use of the Software and destroy any and all copies of the Software in its possession or under its control or return the Software directly to Vendor in accordance with the License Agreement. Furthermore, within thirty days after termination of this Agreement as provided in this Paragraph 23, Borrower agrees to execute and deliver to Lender and Vendor a certificate to the effect that Borrower has ceased its use of the Software as of such termination date and destroyed any and all copies of the Software in its possession or under its control and returned the Software directly to Vendor in accordance with the License Agreement. Upon Vendor's receipt of (i) a return of the Software pursuant to the License Agreement or a certificate of cessation of Software use from the Borrower as herein provided and (ii) a notice of termination from Lender, Borrower acknowledges that Vendor shall be entitled to treat Borrower's license to use the Software as terminated, and as result of such termination, Vendor shall be entitled to permanently suspend the provision of the Software Services and any support, consulting and other services contemplated under the License Agreement.

Any termination of this Agreement at Lender's option as provided in this Paragraph 23 shall take effect at the end of the Initial Term or the Renewal Term then in effect, unless Lender (at its option) elects to terminate this Agreement on an earlier date.

If (i) Lender terminates this Agreement pursuant to this Paragraph 23 or (ii) an Event of Non-appropriation occurs and Borrower continues to use the Software or Software Services after the Initial Term or any Renewal Term during which the Event of Default or Event of Nonappropriation occurs or (iii) if Borrower otherwise refuses to pay Installment Payments due during a Renewal Term for which Borrower's governing body has appropriated sufficient Legally Available Funds to pay such Installment Payments, Lender shall be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Software or Software Services that Borrower continues to use or to the remainder of such Renewal Term for which such appropriations have been made.

Lender shall also be entitled to exercise any or all rights and remedies that Lender may have at law or in equity, including the exercise of any rights and remedies to which Lender is entitled hereunder.

No right or remedy herein conferred upon or reserved to Lender is exclusive of any right or remedy herein or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy herein provided or otherwise available to Lender shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lender of any right hereunder shall not preclude any other or further exercise of any right hereunder.

In the event of any termination of the License Agreement pursuant to the exercise of the termination rights specified in this Paragraph, it is understood and agreed that no refunds shall be due or payable by Vendor or Lender to Borrower.

24. **NO SALE, ASSIGNMENT OR OTHER DISPOSITION BY BORROWER:** Borrower agrees not to (a) sell, assign, transfer, lease, sublease, pledge, license or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement or the Software, (b) de-install the Software from the Location thereof identified in *Exhibit A* hereto or (c) enter into any contract or agreement with respect to the use and operation of any of the Software by any person other than Borrower, without Lender's prior written consent in each instance, all subject to the terms of the License Agreement. Borrower shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Borrower shall take no action that may adversely affect the excludability from gross income for federal income tax purposes of any portion of the interest component of the Installment Payments. Borrower shall not transfer its rights in the License Agreement without prior written consent of Lender and, as required under the License Agreement, Vendor.

25. **ASSIGNMENT BY LENDER:** Lender may, at any time and from time to time, without notice to or consent of Borrower, except to the extent herein expressly provided, assign, transfer or otherwise convey all or any part of its interest in this Agreement, including Lender's rights to receive the Installment Payments or any part thereof (in which event Borrower agrees to make all Installment Payments thereafter to the assignee designated by Lender), to terminate this Agreement or Borrower's rights hereunder, to receive tax indemnity payments pursuant to Paragraph 11 hereof and to exercise Lender's other rights under Paragraph 23 hereof. No assignment, transfer or conveyance permitted under this Paragraph 25 shall be effective until Borrower's registration agent shall have received a written notice of assignment (in substantially the form of *Exhibit I* attached hereto) that discloses the name and address of each such assignee. During the term of this Agreement, Borrower shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. For this purpose, Borrower appoints Lender to act as its registration agent, which appointment Lender hereby accepts. Lender agrees on Borrower's behalf to maintain such record of all assignments. Borrower agrees, if so requested, to acknowledge each such assignment in writing within 15 days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Borrower further agrees that any moneys or other property received by Lender as a result of any such assignment, transfer or conveyance shall not inure to Borrower's benefit.

Lender and Borrower agree that the Borrower shall not assign the License Agreement or give or transfer any Software or Software Services or an interest in them to another individual or entity. Any transfer of rights, other than those Vendor already heretofore consented to in the License Agreement or otherwise, shall require Vendor's written consent.

26. **COSTS:** Borrower shall pay Lender all costs and expenses, including reasonable attorney's fees incurred by Lender in enforcing any of the terms, conditions or provisions of this Agreement.

27. **SEVERABILITY:** If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, which shall be valid and enforceable to the fullest extent permitted by law.

28. **NOTICES:** All notices, reports and other documents provided for in this Agreement shall be deemed to have been given or made when delivered (including by facsimile transmission) or three days after being mailed by certified mail, postage prepaid, addressed to Lender or Borrower at their respective mailing addresses set forth above or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

29. **AMENDMENTS:** This Agreement and the Exhibits attached hereto constitute the entire agreement between Lender and Borrower with respect to the Software and Software Services and the subject matter hereof. No term or provision of this Agreement may be changed, waived, amended or terminated except by a written agreement signed by both Lender and Borrower.

30. **ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE COMPLIANCE:** Borrower represents and warrants to Lender, as of the date of this Agreement, the date of each advance of proceeds under the Agreement, the date of any renewal, extension or modification of this Agreement, and at all times until the Agreement has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; or (ii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of the Agreement will not be used to fund any unlawful activity; (c) the funds used to repay the Agreement are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States.

As used herein: "**Compliance Authority**" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; "**Covered Entity**" means Borrower, its affiliates and subsidiaries and direct and indirect owners; "**Sanctioned Country**" means a country subject to a sanctions program maintained by any Compliance Authority; and "**Sanctioned Person**" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

31. **USA PATRIOT ACT NOTICE**: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when the Borrower opens an account, Lender will ask for the business name, business address, taxpayer identifying number and other information that will allow the Lender to identify Borrower, such as organizational documents. For some businesses and organizations, Lender may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

32. **CONSTRUCTION:** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State in which Borrower is located. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Agreement in each of its provisions.

33. **PARTIES:** The provisions of this Agreement shall be binding upon, and (subject to the limitations of Paragraph 24 hereof) shall inure to the benefit of, the assigns, representatives and successors of Lender and Borrower.

34. **COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same agreement.

35. **INTEREST:** If under applicable law any part of the Installment Payments is deemed or determined to be imputed interest, finance charges or time-price differential (*"Interest"*), Lender and Borrower agree that the Installment Payments shall be deemed to be level payments of principal and Interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If the Interest exceeds such maximum, then at Lender's option, if permitted by law, the Interest payable will be reduced to the legally permitted maximum amount of interest, and any excessive Interest will be used to reduce the principal amount of Borrower's obligation or be refunded to Borrower.

36. **CONFLICTS WITH LICENSE AGREEMENT:** In the event of any conflicts or inconsistencies between the provisions of this Agreement and the License Agreement with respect to the subject matter of this Agreement, the provisions of this Agreement shall prevail as between Borrower and Lender.

BORROWER HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Lender and Borrower have each caused this Agreement to be duly executed and delivered as of the date first above written.

BORROWER:
City of Hialeah

By_____
Name: Carlos Hernandez
Title: Mayor

ATTEST: _____
MARBELYS FATJO
Acting City Clerk

LENDER:
PNC EQUIPMENT FINANCE, LLC

By_____
Name: _____
Title: _____

Approved as to form and legal sufficiency:

William Grodnick
William M. Grodnick
City Attorney

EXHIBIT A

SOFTWARE AND SOFTWARE SERVICES DESCRIPTION AND LOCATION

1. DESCRIPTION OF SOFTWARE:

   Software is to be supplied by **Infor Public Sector, Inc..** as described in the [License Agreement] between **Infor Public Sector, Inc** and **City of Hialeah** attached hereto and made a part hereof.

   Infor products provided under the Order Form dated November _____, 2013

2. DESCRIPTION OF SOFTWARE SERVICES:

   Software Services are to be supplied by **Infor Public Sector, Inc**. as described in the [License Agreement] between **Infor Public Sector, Inc**. and **City of Hialeah** attached hereto and made a part hereof.

   Infor products provided under the Services Work Order dated November _____, 2013

3. FACILITIES AT WHICH SOFTWARE IS TO BE LOCATED:
   501 Palm Avenue
   Hialeah, FL 33010

4. For purposes of the Agreement, "State" means the State of Florida.

5. Borrower's current Fiscal Period extends from October 1, 2013 to September 30, 2014.

AGREED TO this ___ day of _____, 2013.

BORROWER: City of Hialeah

Approved as to form and legal sufficiency:

_____
William M. Grodnick
City Attorney

By _____
Name: Carlos Hernandez
Title: Mayor

ATTEST: _____
MARBELYS FATJO
Acting City Clerk

EXHIBIT B

INSTALLMENT PAYMENT SCHEDULE

The Installment Payments shall be made for the Software and Software Services as follows:

Payment Number	Date	Payment	Interest	Principal	Termination Amount
1	2/1/2014	$100,000.00	$0.00	$100,000.00	$823,725.00
2	8/1/2014	$100,000.00	$0.00	$100,000.00	$723,725.00
3	2/1/2015	$180,931.25	$0.00	$180,931.25	$542,793.75
4	8/1/2015	$180,931.25	$0.00	$180,931.25	$361,862.50
5	2/1/2016	$180,931.25	$0.00	$180,931.25	$180,931.25
6	8/1/2016	$180,931.25	$0.00	$180,931.25	$1.00

AGREED TO this ____ day of _____,2013.

BORROWER: City of Hialeah

By _____

Name: Carlos Hernandez

Title: Mayor

Approved as to form and legal sufficiency:

_____
William M. Grodnick
City Attorney

ATTEST: _____
MARBELYS FATJO
Acting City Clerk

EXHIBIT C

ACCEPTANCE AND PAY PROCEEDS CERTIFICATE

In compliance with the terms, conditions and provisions of the Installment Payment Agreement dated November _____, 2013 ("IPA"), by and between the undersigned City of Hialeah ("Borrower") and PNC Equipment Finance, LLC ("Lender"), Borrower hereby:

(a) By signing below, Borrower directs Lender to commence the IPA, agrees that Borrower's liability under the IPA is unconditional, and accepts all of the Software for all purposes under the IPA and all attendant documents as of the Acceptance Date indicated below. If Software Services are included as part of the Software being provided, Borrower directs Lender to pay the Vendor for those Software Services on its behalf even if those services have not been completed and received by Borrower. Borrower requests that Lender pay the Vendor and acknowledges that its obligation to repay Lender with the Installment Payments set forth in the Schedule will have commenced.

(b) accepts all the Software for all purposes under the IPA and all attendant documents as of the Acceptance Date indicated below; and

(c) restates and reaffirms, as of such Acceptance Date, each of the representations, warranties and covenants heretofore given to Lender in the IPA.

Delivery of an executed copy of this Acceptance and Pay Proceeds Certificate by facsimile, email or any other reliable means is as effective for all purposes as delivery of a manually executed copy. Borrower understands that Lender may maintain a copy of this document in electronic form and agrees that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original. By signing below, Borrower represents and warrants that Borrower's name, as set forth in the signature block below, is Borrower's exact legal name and the information identifying Borrower's state of organization is true, accurate and complete in all respects.

ACCEPTANCE DATE: X _____

AUTHORIZED SIGNATURE: X _____

NAME TYPED OR PRINTED: X RICARDO SUAREZ

TITLE: X CHIEF INFORMATION OFFICER

Exhibit "F"

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE AND FINANCING OF CERTAIN COMPUTER SOFTWARE AND RELATED SERVICES FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSCATIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Hialeah, as Borrower ("Borrower") is a local government unit of the State of Florida, is authorized by the laws of the State of Florida to purchase and acquire personal property (whether tangible or intangible) for the benefit of the Borrower and its residents and to enter into installment purchase contracts with respect thereto; and

WHEREAS, the Borrower desires to purchase and acquire certain computer software and related services on an installment purchase basis constituting personal property necessary for the Borrower to perform essential governmental functions; and

WHEREAS, in order to acquire such computer software and related services, the Borrower proposes to enter into that certain Installment Purchase Agreement ("Agreement") with PNC Equipment Finance, LLC, as Lender ("Lender"), the form of which has been presented to the governing body of the Borrower at this meeting; and

WHEREAS, the City Council of the City of Hialeah deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement for the purchase and acquisition of the computer software and related services on an installment purchase basis therein described on the terms and conditions therein provided.

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

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are incorporated and adopted by reference as if fully set forth herein.

Section 2: **Approval of Documents.** The form, term and provisions of the Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by the Mayor of the Borrower, the execution of such document being conclusive evidence of such approval; and the Mayor of the Borrower is hereby authorized and directed, the Agreement and any related exhibits attached thereto.

Section 3: **Other Actions Authorized.** The officers and employees of the Borrower shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance and Pay Proceeds Certificate contemplated in the Agreement, including appropriate arbitrage certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 4: **No General Liability.** Nothing contained in this Resolution, the Agreement or any other instrument shall be construed with respect to the Borrower as incurring a pecuniary liability or charge upon the general credit of the Borrower or against its taking power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Borrower or any charge upon its credit or against its taking power.

Section 5: **Appointment of Authorized Borrower Representatives.** The Mayor and the Chief Information Officer of the Borrower are hereby designated to act as authorized representatives of the Borrower for purposes of the Agreement until such time as the City

Council of the City of Hialeah shall designate any other or different authorized representative for purposes of the Agreement.

PASSED AND ADOPTED this ____ day of _____, 2013.

_____
Isis Garcia-Martinez
Council President

Attest:

Approved on this ____ day of _____, 2013.

_____
Marbelys Fatjo, Acting City Clerk

_____
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William Grodnick

William M. Grodnick, City Attorney

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EXHIBIT G

INCUMBENCY CERTIFICATE OF BORROWER

The undersigned, the duly authorized representative of, City of Hialeah as Borrower (the *"Borrower"*) under that certain Installment Purchase Agreement dated as of November 14, 2013 (the *"Agreement"*), with PNC Equipment Finance, LLC, as Lender, hereby certifies as follows in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement.

I hold the position noted under my signature, and I have all authority necessary to execute and deliver this Certificate. The following officers of the Borrower are duly elected or appointed, and the signatures above the respective name and title are true and correct and, where required, have been filed with the appropriate officials of the State.

Signature	Signature
Name: Carlos Hernandez	Name: Ricardo Suarez
Title: Mayor	Title: Chief Information Officer

IN WITNESS WHEREOF, I have executed and delivered this certificate as of this ___ day of _____, 20____.

Signature

Name: Marbelys Fatjo

Title: Acting City Clerk

Exhibit "H"

William M. Grodnick
City Attorney

Telephone:
(305) 883-5854

Telecopier:
(305) 883-5896

City of Hialeah

Assistant City Attorneys

Lorena E. Bravo
Karen H. Callejo
Alan E. Krueger
Robert Lloyd-Still
Melissa Negron
Marbelys Rubio
Hillah Sara Mendez

November 26, 2013

Re: Installment Purchase Agreement

Ladies and Gentlemen:

As counsel for City of Hialeah (*"Borrower"*), I have examined the duly executed original Installment Purchase Agreement dated November ___, 2013 (the *"Agreement"*) between Borrower and PNC Equipment Finance, LLC (*"Lender"*), and the proceedings taken by the governing body of Borrower to authorize the execution and delivery of the Agreement on behalf of Borrower. Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Borrower is a state agency, department or board of the State of Florida or a local government unit duly organized and legally existing as a municipal corporation under the laws of the State of Florida with full power and authority to enter into the Agreement.

2. The Agreement has been duly authorized, executed and delivered by Borrower and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

3. Borrower has complied with any applicable public bidding requirements in connection with the Agreement and the transactions contemplated thereby, including entering into the License Agreement and purchasing the Software Services (all as more fully described in the Agreement).

4. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery or performance by Borrower of the Agreement or in any way to contest the validity of the Agreement, to contest or question the creation

or existence of Borrower or its governing body or the authority or ability of Borrower to execute or deliver the Agreement or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin Borrower from annually appropriating sufficient funds to pay the Installment Payments or other amounts contemplated by the Agreement.

5. The resolution adopted by Borrower's governing body authorizing the execution and delivery of the Agreement and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

6. The entering into and performance of the Agreement do not violate any judgment, order, law or regulation applicable to Borrower or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Borrower or on the Software (as defined in the Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Borrower is a party or by which it or its assets may be bound.

This opinion may be relied upon by purchasers and assignees of Lender's interests in the Agreement pursuant to Paragraph 25 of the Agreement. [A copy of this opinion is being furnished to _____, Special Tax Counsel in connection with the Agreement, which is authorized to rely on this opinion in rendering its opinion as Special Tax Counsel of even date herewith.]

Respectfully submitted,

William Grodnick

William M. Grodnick
City Attorney