RESOLUTION NO. 2015-84

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CITY OF HIALEAH, FLA. RESOLUTION 2015-50 (APRIL 17, 2015) APPROVING THE TERMS OF THE UNSECURED PROMISSORY NOTE TO MEMORIALIZE THE INTER-AGENCY FUND LOAN FROM THE WATER AND SEWER DIVISION OF THE DEPARTMENT OF PUBLIC WORKS TO THE SOLID WASTE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, IN THE PRINCIPAL SUM OF NINETEEN MILLION DOLLARS ($19,000,000.00), AUTHORIZED PURSUANT TO HIALEAH, FLA., RESOLUTION 13-129 (DECEMBER 10, 2013) TO RESCIND THE AUTHORITY TO EXECUTE THE UNSECURED PROMISSORY NOTE GRANTED TO ARMANDO VIDAL, AS DIRECTOR OF PUBLIC WORKS, AND FURTHER REAFFIRMING THE TERMS OF THE UNSECURED PROMISSORY NOTE AND AUTHORIZING THE MAYOR, AND THE CITY CLERK, AS ATTESTING WITNESS, TO EXECUTE THE UNSECURED PROMISSORY NOTE, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", AND ALL OTHER DOCUMENTS NECESSARY IN FURTHERANCE HEREOF.

WHEREAS, pursuant to Hialeah, Fla., Resolution 13-129 (December 10, 2013), the City of Hialeah as the owner of certain assets comprising 35.438 acres of land and buildings thereon, transferred such assets to its Department of Public Works; and

WHEREAS, the Water and Sewer Division of the Public Works Department loaned the sum of $19,000,000.00 to the Solid Waste Division of the Public Works Department for the purpose of financing the internal asset transfer and pay the fair market value of the assets to the City's General Fund; and

WHEREAS, the terms of the Unsecured Promissory Note memorializing the terms under which the Solid Waste Division intends to repay the Water and Sewer Division of the Public Works Department for the interfund transfer of the sum of $19,000,000.00 where approved on April 17, 2015 by Hialeah, Fla. Resolution 2015-50 and the terms remain unchanged; and

WHEREAS, the Mayor as the Chief Executive of the City is the proper official with the authority to execute the Unsecured Promissory Note;

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: The City Council of the City of Hialeah, Florida hereby reaffirms the terms of the unsecured promissory note approved on April 17, 2015 by Hialeah, Fla. Resolution 2015-50 memorializing the inter-agency fund loan from the Water and Sewer Division of the Department of Public Works to the Solid Waste Division of the Department of Public Works, in the principal sum of nineteen million dollars ($19,000,000.00), for the purpose of financing the internal transfer of assets comprising of 35.438 acres improved with buildings from the City's General Fund to the Department of Public Works, Solid Waste Division, authorized pursuant to Hialeah, Fla., Resolution 13-129 (December 10, 2013).

Section 3: The City Council of the City of Hialeah, Florida hereby amends Hialeah, Fla. Resolution 2015-50 (April 17, 2015) by rescinding the authority to execute the unsecured promissory note granted to Armando Vidal, as Director of Public Works.

Section 4: The City Council of the City of Hialeah, Florida hereby authorizes the Mayor, and the City Clerk, as attesting witness, to execute the unsecured promissory note, a copy of which is attached hereto and made a part hereof as Exhibit "1", and all other documents necessary in furtherance hereof.

PASSED AND ADOPTED this 9 day of June, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 10 day of June, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

UNSECURED PROMISSORY NOTE

$19,000,000.00 _____, 2015

1. **Principal.**

FOR VALUE RECEIVED, the undersigned, **Solid Waste Division** of the Public Works Department (the "Borrower") promises to pay to the **Water and Sewers Division** of the Public Works Department (the "Lender"), in the manner hereinafter specified, the principal sum of Nineteen Million Dollars ($19,000,000.00), with initial interest accruing from January 1, 2014, calculated in accordance with the terms and provisions provided herein.

2. **Interest.**

Interest accrued on this note shall be payable at the per fixed annum rate of two and one-half percent (2.5%) calculated based on the actual number of days elapsed in a year consisting of 365 days, until such time as this note is paid in full. However, in the event that the Internal Revenue Service ("IRS"), under IRS Code Regulations, determines that a higher interest rate should have been applied, then whatever the interest rate as determined by the IRS should have been applied, the Borrower agrees to pay that adjusted interest rate retro-active from whatever date the IRS determines is applicable. The Borrower shall be entitled to contest the determination of the IRS regarding the applicable interest rate. However, it agrees to hold harmless the Lender as to all interest and penalties which may be imposed by the IRS in the event the Borrower is not successful in any such contest, which such interest and penalties shall be due and payable immediately upon demand by the Lender.

3. **Payments.**

Principal and interest shall be paid payable in equal successive quarterly installments, in arrears, starting on March 1, 2018 and subsequently every June, September and December until all principal and accrued interest have been paid in full.

All amounts required to be paid under this Note shall be payable at in lawful money of the United States of America at the office of the Finance Director, located at 501 Palm Avenue, 4th Floor, Hialeah, Florida 33010, or at such place as may hereafter be designated by written notice from the holder to the maker hereof.

4. **Maturity Date.**

Unless otherwise prepaid in accordance with the terms of this Note, the entire principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable on September 30, 2030.

5. **Prepayment.**

The Borrower shall have the privilege of prepaying this Note, in part or in full, at any time, without penalty; payment shall be applied first to the payment of any accrued interest due and unpaid as of the date of such payment; second, to the outstanding principal sum; and the balance, if any, to any accrued, but not yet due and payable, interest.

6. **Default and Remedies; Acceleration.**

If default be made in the payment of any of the sums or interest mentioned herein, or in the performance of any of the agreements contained herein, then the entire unpaid principal sum and accrued interest shall, at the option of the Lender hereof, become at once due and collectible without notice to Borrower, time being of the essence; and said principal sum and accrued interest shall both bear interest from such time until paid at the "Default Rate" as hereinafter defined. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent or continuing default. For purposes of this Note the "Default Rate" shall be the highest rate permitted by appropriate law.

7. **Severability.**

The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provisions, provision, or portion of any provision in this Note is found by a court of competent jurisdiction to be in violation of any applicable local, state or federal ordinance, statute, law, or administrative or judicial decision, or public policy, and if such court would declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force and effect to the fullest possible extent that they are legal, valid and enforceable, and that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were severable and not contained therein, and that the rights, obligations and interest of the Borrower and the Lender hereof under the remainder of this Note shall continue in full force and effect.

8. **Waivers, Costs and Expenses.**

Borrower hereby waives presentment, protest, notice, notice of protest and notice of dishonor. Borrower shall pay the cost of any revenue tax or other stamps now or hereafter required by law at any time to be affixed to this Note.

9. **Renewal.**

The taking of a renewal note without the signature of any Borrower or endorser liable on this Note shall not be deemed a payment or discharge of this obligation and the liability created hereunder shall continue until this Note is paid in full.

10. **Waiver of Jury Trial.**

Borrower and Lender hereby knowingly, voluntarily and intentionally waive any right either or both may have to a trial by jury in respect of any litigation based on this Note, or arising out of, under or in connection with this Note or any agreement contemplated to be executed in connection with this Note, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party, now or in the future, with respect hereto or arising out of this Note or future dealings between Borrower and Lender, or their successors or assigns. This provision is a material inducement to Borrower and Lender for the execution, delivery, and acceptance of this Note.

11. **Legal Rate of Interest.**

All terms, conditions and agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the Lender hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable laws. If, from any circumstances whatsoever, fulfillment of any provision hereof shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if under any circumstances the Lender hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

12. **Miscellaneous.**

Whenever used herein, the terms "Borrower" and "Lender" shall be construed in the singular or plural as the context may require or admit. This Note is to be construed according to the laws of the State of Florida. Captions and headings in this Note are for convenience only and shall not be relied upon in construing the meaning of this Note or any of its provisions.

Documentary stamp tax in the amount of $_____ is being paid with the recording of the Mortgage securing this Note.

[This space left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note on the date set forth above.

Attest:

Marbelys Fatjo
City Clerk

By:
Carlos Hernandez
Mayor

Approved as to legal sufficiency and form:

Lorena E. Bravo, City Attorney