

**RESOLUTION NO. 15-\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$13,000,000 SALES TAX REVENUE REFUNDING NOTES OF THE TOWN OF CUTLER BAY, FLORIDA FOR THE PURPOSE OF REFUNDING THE TOWN'S PROMISSORY NOTES, SERIES 2010A, B, C, D AND E AND PAYING COSTS OF ISSUANCE OF THE NOTES; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH TD BANK, N.A.; AWARDING THE LOAN TO THE BANK; PROVIDING FOR SECURITY FOR THE NOTES; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE NOTES; REPEALING ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay, Florida ("Town"), a municipal corporation, is duly created and existing pursuant to the Florida Constitution and by virtue of the laws of the State of Florida ("State"); and

**WHEREAS**, on June 14, 2010, pursuant to Ordinance No. 10-06 adopted by the Town Council (the "Town Council") on June 14, 2010 and Resolution No. 10-28 adopted by the Town Council on May 26, 2010, the Town issued its Promissory Notes, Series 2010A, Series 2010B, Series 2010C, Series 2010D and Series 2010E, each dated June 14, 2010 (collectively, the "Prior Notes") and entered into a loan agreement with TD Bank, N.A. (the "Bank") in order to provide for the acquisition of vacant land and the acquisition and renovation of the Town Hall; and

**WHEREAS**, on September 20, 2012, pursuant to Resolution No. 12-46 adopted by the Town Council on September 10, 2012, the Town and the Bank entered into an Amendment to Loan Agreement in order to restructure the amortization schedules for the Series 2010B, Series 2010C and Series 2010E Notes; and

**WHEREAS**, the interest rates on the Series 2010A, Series 2010B, Series 2010D and Series 2010E Notes will reset in June 14, 2015; and

**WHEREAS**, the original terms of the Series 2010C Note provides that such Note cannot be prepaid prior to maturity without the Town incurring a substantial prepayment penalty; and

**WHEREAS**, the Bank has offered to waive the prepayment penalty if the Town undertakes the refinancing of all of the Prior Notes pursuant to a new loan agreement with the Bank; and

**WHEREAS**, refinancing the Prior Notes will result in substantial debt service savings to the Town as compared to the current debt service on the Prior Notes ; and

**WHEREAS**, on May 20, 2015, the Town Council adopted Ordinance No. 15-\_\_ (the “Ordinance”) (i) approving the borrowing of funds in an amount not to exceed \$13,000,000 for the purpose of refunding the Prior Notes and paying costs of issuance of the Notes and (ii) accepting the term sheets (the “Term Sheets”) from the Bank providing the terms of the refinancing, which are attached as Exhibit “A” to the Ordinance.; and

**WHEREAS**, the Council desires to authorize the issuance of not exceeding \$13,000,000 in aggregate of Sales Tax Revenue Refunding Note, Series 2015A and Taxable Sales Tax Revenue Refunding Note, Series 2015B (collectively, the “Notes”) for the purpose of refunding the Prior Notes and paying costs of issuance of the Notes; and

**WHEREAS**, the Council desires that the Notes be secured by a pledge of the Local Government Half-Cent Sales Tax Revenues; and

**WHEREAS**, the Council hereby determines it to be in the best interests of the Town to negotiate the terms of the Notes in accordance with the provisions of §218.385, F.S., and to award the making of the loan evidenced by the Notes to the Bank in accordance with the additional findings set forth herein; and

**WHEREAS**, the Council desires to set forth the details of the Notes and the other provisions of the financing in a Loan Agreement with the Bank (the “Loan Agreement”).

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:**

**Section 1. Findings.** The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Resolution.

**Section 2. Authority.** In accordance with the provisions of the Charter of the Town and Chapter 166, Florida Statutes, there is hereby authorized to be issued Sales Tax Revenue Refunding Notes of the Town, in an aggregate principal amount not to exceed \$13,000,000, for the purpose of refunding the Prior Notes and paying costs of issuance of the Notes. The Notes shall be issued in two series, designated “Town of Cutler Bay, Florida Sales Tax Revenue Refunding Note, Series 2015A” and “Town of Cutler Bay, Florida Taxable Sales Tax Revenue Refunding Note, Series 2015B”. The details of the Notes and the other provisions of the financing shall be set forth in the Loan Agreement.

**Section 3. Approval of Loan Agreement.** The Council hereby approves the form and content of the Loan Agreement by and between the Town and the Bank, presented at this meeting and attached hereto as Exhibit “A”. The Town Manager is hereby authorized to execute and deliver the Loan Agreement on behalf of the Town, and the Town Clerk is authorized to place the Town’s seal thereon and attest thereto, in substantially the form presented at this

meeting, with such changes, modifications, deletions and insertions as the Town Manager, with the advice of the Town Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Town.

**Section 4. Authority of Officers.** The Town Manager is hereby authorized to negotiate the final terms of the Notes and the Loan Agreement, consistent with the Term Sheets, and to execute the Notes, the Loan Agreement and related documents, and to do all other things necessary to accomplish the issuance of the Notes and delivery the Loan Agreement. The Town Clerk is hereby authorized to attest the Town Manager's signature. The Mayor, the Vice Mayor, any member of the Town Council, the Town Manager, the Town Clerk, the Finance Director and the Town Attorney are each hereby authorized to execute such documents as are necessary to accomplish the issuance of the Notes and delivery the Loan Agreement. All action taken to date by the officers of the Town in furtherance of the issuance of the Notes and the obtaining of the Term Sheets is hereby approved, confirmed and ratified.

**Section 5. Pledge of Security.** The Council hereby authorizes that the Loan Agreement set forth a pledge of the Local Government Half-Cent Sales Tax Revenues collected by the Town in order to secure the payment of the Notes.

**Section 6. Negotiated Award of the Loan.** Based upon the current favorable interest rate environment, the uncertainty of the interest rate environment if closing of the loan and issuance of the Notes is delayed, and the ability of the Bank to waive the prepayment penalty on the Series 2010C Note, the Town hereby determines the necessity for a negotiated award of the loan. Prior to the closing of the loan, the Town will require that it be provided all applicable disclosure information required by Section 218.385, Florida Statutes. The negotiated award of the loan to the Bank is hereby approved.

**Section 7. Bank Qualified Issue.** The Town hereby designates the Sales Tax Revenue Refunding Note, Series 2015A to be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code.

**Section 8. Repeal of Resolutions in Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Resolution are repealed to the extent of such conflict.

**Section 9. Severability Clause.** If any section, clause, sentence, or phrase of this Resolution is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Resolution.

**Section 10. Effective Date.** This Resolution shall take effect immediately upon the effective date of the Ordinance.

PASSED and ADOPTED this \_\_\_\_ day of May, 2015

Attest:

\_\_\_\_\_  
PEGGY R. BELL  
Mayor

\_\_\_\_\_  
JACQUELINE N. WILSON  
Interim Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER  
BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.  
Town Attorney

Moved By: \_\_\_\_\_  
Seconded By: \_\_\_\_\_

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell \_\_\_\_\_

Vice Mayor Ernest N. Sochin \_\_\_\_\_

Councilmember Roger Coriat \_\_\_\_\_

Councilmember Mary Ann Mixon \_\_\_\_\_

Councilmember Sue Ellen Loyzelle \_\_\_\_\_

**EXHIBIT "A"**

**FORM OF LOAN AGREEMENT**