

RESOLUTION NO. 04-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE ISSUANCE AND SALE BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. OF ITS REVENUE NOTE, SERIES 2004 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,600,000 TO REFUND THE CORPORATION'S OUTSTANDING REVENUE NOTE, PAY THE COST OF CAPITAL PROJECTS AND PAY COSTS OF ISSUANCE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town of Fort Myers Beach Public Works Service, Inc. (the "Borrower") previously issued its Revenue Note, Series 2001 (the "Refunded Note") in the principal amount of \$3,600,000 and used the proceeds of the Refunded Note to acquire the water utility system serving the Town (the "Water System"), and is authorized to issue its revenue note payable from the net revenues of the Borrower to refund the Refunded Note and pay the cost of capital additions to the Water System; and

**WHEREAS**, on April 5, 2004, the Borrower is expected to adopt a Resolution (the "Note Resolution") providing for the issuance of its Revenue Note, Series 2004 in the principal amount of \$3,600,000 (the "Note") to finance the current refunding of the Borrower's outstanding Refunded Note, the cost of certain capital improvements to the Borrower's Water System and costs of issuance, approving a Loan Agreement ("Loan Agreement") between the Borrower and SunTrust Bank (the "Bank") and awarding and sale of the Note to the Bank at a private negotiated sale and providing the terms thereof; and

**WHEREAS**, the Town Council desires to (i) approve the issuance of the Note and the execution of the Loan Agreement by the Borrower and the award of the sale of the Note to the Bank and (ii) to induce the Bank to purchase the Note, covenant to budget and appropriate from its legally available non-ad valorem revenues sufficient amounts necessary to pay when due the principal of and interest on the Note to the extent that the Pledged Revenues, as that term is defined in the Note Resolution, prove insufficient to make such payment when due;

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**SECTION 1. Approval and Authorization of Note Resolution, Note and Loan Agreement.** The Town Council hereby approves and authorizes the adoption by the Borrower of the Note Resolution and the issuance and sale thereunder of the

Note and the execution, delivery and performance of the Loan Agreement for the purposes mentioned above, and the Town Council does hereby further approve the execution, delivery and performance by the Borrower of the Note and the Loan Agreement. It is hereby ascertained, determined and declared that, because of the characteristics of the Note, prevailing and anticipated market conditions, and savings to be realized in an expeditious sale of the Note, it is in the best interests of the Town and the Borrower for the Borrower to sell the Note at a private negotiated sale to the Bank.

SECTION 2. Guarantee; Covenant to Budget and Appropriate. In order to induce the Bank to purchase the Note, the Town hereby guarantees the timely payment of principal and interest on the Note and covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from its legally available non-ad valorem funds ("Non-Ad Valorem Revenues") amounts sufficient to pay the principal of and interest on the Note when due and any other amounts payable under the Loan Agreement, if and to the extent that the Pledged Revenues, as defined in the Loan Agreement, should be insufficient for the timely payment of all such amounts. Such covenant and agreement on the part of the Town to budget and appropriate such Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such legally available Non-Ad Valorem Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now maintained or provided by the Town, which generate legally available Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bank a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Town. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Note, in the manner described herein, Non-Ad Valorem Revenues and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder on a timely basis when Pledged Revenues are insufficient for such purpose; subject, however, in all respects to the restrictions of Section 166.241(3), Florida Statutes, which provide that the governing body of each municipality shall adopt a budget each fiscal year in which the amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures

and reserves; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

The Town agrees to transfer to the Bank solely from funds budgeted and appropriated as described above, no later than the date designated for payment of any principal of or interest on the Note, sufficient moneys to pay such principal or interest to the extent Pledged Revenues are insufficient for such purpose.

In addition to the foregoing covenant to budget and appropriate and pay to the Bank sufficient Non-Ad Valorem Revenues to cure any such deficiency in the Pledged Revenues, the Town also covenants and agrees, upon the occurrence of any such deficiency, to increase, as soon as practicable, the rates and charges of the Water System to provide sufficient Pledged Revenues to avoid any further such deficiencies and to that end to hold any required public hearing, follow any required procedures or take any other actions necessary.

SECTION 3. Joinder in Note. To evidence its obligation to guarantee payment when due of the Note by appropriation and budgeting of Non-Ad Valorem Revenues as set forth in Section 2 above, the form of a Joinder to Note, attached hereto as Exhibit "A" (the "Joinder") is hereby approved, and the Mayor and the Town Clerk or their duly authorized designees, are hereby authorized to execute the Joinder and deliver it to the Bank in substantially the form attached hereto.

SECTION 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

This Resolution was passed and adopted at a meeting of the Town Council of the Town of Fort Myers Beach, Florida on this 5<sup>th</sup> day of April, 2004.

**TOWN OF FORT MYERS BEACH,  
FLORIDA**

By *Daniel Hughes*  
Mayor

(SEAL)

ATTEST:

*Marta Segal-Georg*  
Town Clerk

Approved as to form and legality.

*Richard H. Ren*  
Town Attorney,  
Town of Fort Myers Beach, Florida

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