

ORDINANCE NO. 589

AN ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 337, AS PREVIOUSLY AMENDED; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$2,153,000 SUBORDINATE WATER AND SEWER SYSTEM REVENUE BONDS TO FINANCE A PORTION OF THE COST OF THE MAKING OF CERTAIN IMPROVEMENTS TO THE WATER SYSTEM AND CERTAIN COSTS IN CONNECTION THEREWITH; PLEDGING A SUBORDINATE LIEN ON THE NET REVENUES OF THE WATER AND SEWER SYSTEM TO SECURE THE PAYMENT THEREOF; PROVIDING FOR THE ISSUANCE OF TEMPORARY BOND ANTICIPATION NOTES; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MEXICO BEACH, FLORIDA

(the "Issuer"), as follows:

ARTICLE I

GENERAL

1.01. Authority for this Ordinance. This Ordinance (the "Ordinance") is enacted pursuant to the provisions of the Florida Constitution; Chapter 166, Part II, Florida Statutes; the municipal charter of the City of Mexico Beach, Florida; and other applicable provisions of law (collectively, the "Act"), and supplements and amends Ordinance No. 337, enacted by the Issuer on February 17, 1997, as amended by Ordinance No. 356, enacted by the Issuer on March 30, 1999 (collectively, the "Bond Ordinance").

1.02. Findings. It is hereby found and determined that:

(A) For the benefit of its inhabitants, the City Council of the Issuer finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to construct improvements to the Water System of the Issuer in accordance with plans and specifications prepared by the Issuer's Consulting Engineers on file from time to time (the "2012 Water System Project") with the City Clerk of the Issuer (the "City Clerk").

(B) The Issuer has been advised by its Consulting Engineers that the cost of constructing the 2012 Water System Project in accordance with said plans and specifications is estimated at \$4,815,000 which will be paid with the proceeds of the sale of the Series 2012 Bonds (as defined herein) herein authorized, a federal grant in the amount of \$1,840,000 (the "Rural Development Grant") and the Issuer's contribution of \$822,000, and shall be deemed to include all expenses necessary, appurtenant or incidental thereto, including the cost of any land or interest therein or of any fixtures or equipment, or property necessary or convenient therefor, the cost of labor and materials to complete such construction, engineering and legal expenses, fiscal expenses, expenses for estimates of costs and revenues, expenses for plans, specifications and surveys, interest during construction, if any, administration expenses and all other necessary miscellaneous expenses.

(C) The Pledged Revenues (as defined in the Bond Ordinance), to be derived annually from the rates, rentals, fees and other charges made and collected for the services and facilities of the Systems (as defined in the Bond Ordinance) will be sufficient to pay the principal and interest on the Series 2012 Bonds herein authorized, the Senior Lien Bonds and the Parity Bonds (each as defined herein and collectively, the "Utility Bonds"). The Pledged Revenues are estimated

to be sufficient to pay the principal and interest on the Utility Bonds. However, in the event that the Pledged Revenues are insufficient to pay the Series 2012 Bonds, the Issuer herein covenants to budget and appropriate Non-Ad Valorem Revenues (as defined herein) as necessary to meet the payment and reserve requirements of the Series 2012 Bonds (such funds, if budgeted and appropriated, are herein referred to as the "Budgeted Funds"). It is estimated that the period of usefulness of the 2012 Water System Project will be at least forty (40) years.

(D) It is deemed necessary and desirable to pledge to the payment of the principal of, redemption premium, if any, and the interest on the Series 2012 Bonds herein authorized, a lien on the Pledged Revenues, which lien on the Pledged Revenues shall be subordinate to the lien thereon of the Senior Lien Bonds and equal and ratable to the lien thereon of the Parity Bonds.

(E) This Ordinance is declared to be and shall constitute a contract between the Issuer and the holders of the Series 2012 Bonds. The covenants and agreements herein set forth to be performed by the Issuer are and shall be for the benefit, protection and security of the holders of any and all of the Bonds issued under the Bond Ordinance. The Budgeted Funds, if any, secure only the Series 2012 Bonds.

(F) The Issuer is not under this Ordinance obligated to levy any taxes on any real or personal property to pay (i) the principal of or interest on the Series 2012 Bonds hereinafter authorized, or (ii) the cost of maintaining, repairing and operating the Systems. The Series 2012 Bonds issued pursuant to this Ordinance shall not constitute a lien upon the Systems or any other property of the Issuer or situated within its corporate limits, except the Pledged Revenues and the Budgeted Funds in the manner provided herein.

(G) Prior to issuance of the Bond Anticipation Notes (as defined herein) or the Series 2012 Bonds, the Issuer will have obtained from SunTrust Bank, the holder of the Series 2009 Note (as defined herein) and the Issuer's outstanding Capital Improvement Refunding Revenue Note, Series 2009, consent to issue the Series 2012 Bonds on a parity with the Series 2009 Note, a form of which consent is attached hereto as Exhibit A.

(H) Prior to issuance of the Series 2012 Bonds the Issuer will have obtained from State of Florida, Department of Environmental Protection, consent to issue the Series 2012 Bonds and subordination of the State Revolving Fund Loan (as defined herein) to the Series 2012 Bonds.

1.03. Definitions. Capitalized, undefined terms used herein shall have the meaning given to them in the Bond Ordinance. In addition, the following terms in this Ordinance shall have the following meanings unless the text otherwise expressly requires:

"Bond Anticipation Notes" means notes issued prior to and in anticipation of the issuance of the Series 2012 Bonds pursuant to Section 4.02 hereof for the purpose of obtaining interim financing for the 2012 Water System Project.

"Budgeted Funds" means the Non-Ad Valorem Revenues budgeted and appropriated to pay principal of and interest on the Series 2012 Bonds, if necessary, as described in Section 3.03 hereof.

"Non-Ad Valorem Revenues" means all revenues of the Issuer not derived from ad valorem taxation, and which are lawfully available to be used to pay debt service on the Series 2012 Bonds.

"Parity Bonds" shall mean the Series 2009 Note.

"Preauthorized Debit" shall mean the payment of principal and interest electronically from the Issuer's designated bank account.

"Senior Lien Bonds" shall mean the Issuer's outstanding \$2,303,100 Sewer System Revenue Bonds, Series 2000.

"Series 2009 Note" shall mean the Issuer's outstanding \$3,000,000 Utility System Refunding Revenue Note, Series 2009.

"Series 2012 Bonds" shall mean the bonds authorized and issued pursuant to this Ordinance.

"State Revolving Fund Loan" shall mean that certain loan from the State of Florida Department of Environmental Protection to the Issuer dated April 27, 2001.

"Subordinate Bonds" shall mean the State Revolving Fund Loan.

1.04. Construction of 2012 Water System Project Authorized. The Issuer is hereby authorized to construct the 2012 Water System Project as defined in Section 1.02(A) above.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF REVENUE BONDS

2.01. Authorization of Revenue Bonds. Subject and pursuant to the provisions of this Ordinance obligations of the Issuer to be known as "City of Mexico Beach, Florida Subordinate Water and Sewer System Revenue Bonds, Series 2012" are hereby authorized to be issued in an aggregate principal amount not exceeding Two Million One Hundred Fifty Three Thousand Dollars (\$2,153,000) for the purpose of providing funds to pay a part of the cost of the 2012 Water System Project provided for in Section 1.02(A) hereof. Should the Series 2012 Bonds be issued in a year other than 2012, the series designation shall be changed to such year of issuance. The Series 2012 Bonds shall mature on such dates, shall bear interest at such rates, and shall be payable on such

dates, as shall be established in a resolution of the City Council of the Issuer adopted prior to the issuance of the Series 2012 Bonds.

2.02. Method of Payment. Both the principal of and interest on the Series 2012 Bonds shall be payable in lawful money of the United States of America, except that payment of interest on the Series 2012 Bonds on any interest payment date will be made to the person appearing as the registered owner thereof on the registration books of the Issuer maintained by the Bond Registrar on the 15th day of the month preceding such date, such interest to be paid by check or draft mailed to the registered owner at his address as it appears on such registration books; provided, however, that the principal of and interest on the Series 2012 Bonds held by the United States of America, acting through the United States Department of Agriculture, Rural Utilities Service, hereinafter called the "Government" at United States Department of Agriculture, 2741 Pennsylvania Avenue, Suite 5, Marianna, Florida 32448, or such other places as the Government shall from time to time in writing designate to the Issuer. Unless other written instruction is received, payments shall be debited from the Issuer's bank account which will allow for payment to be made electronically by Preauthorized Debit. The payment shall be debited by preauthorized debit from the Issuer's bank account the day payment is due.

The Series 2012 Bonds or principal installments thereof held by the United States of America may be redeemed on any interest due date without the payment of a premium. The Issuer shall have the right to call the Series 2012 Bonds or principal installments thereof redeemable at no premium prior to calling the Series 2012 Bonds or principal installments thereof redeemable at a premium. At least thirty (30) days prior to the redemption date, written notice of any redemption shall be filed with the Paying Agent and mailed, postage prepaid to all registered owners at their

respective addresses as they appear upon the registration books of the Issuer. Provided, however, that failure to mail such notice to one or more owners of the Series 2012 Bonds shall not affect the validity of the proceedings for such redemption with respect to owners of the Series 2012 Bonds to which notice was duly mailed hereunder.

### ARTICLE III

#### COVENANTS, SPECIAL FUNDS AND APPLICATION THEREOF

3.01. Application of the Series 2012 Bond Proceeds. The Issuer hereby covenants that it will establish with a depository in the State of Florida, which is a member of the Federal Deposit Insurance Corporation and which is eligible under the laws of the State of Florida to receive municipal funds, a separate account or accounts (herein collectively called the "2012 Water System Project Construction Account") into which shall be deposited the proceeds from the sale of the Series 2012 Bonds herein authorized (except such portion thereof as shall be necessary to pay interest on the Series 2012 Bonds during the construction of the 2012 Water System Project, if any, which shall be deposited to the Interest Account of the Sinking Fund and such portion thereof used to retire such notes authorized and issued pursuant to Section 4.02 hereof) required to assure payment in full of the cost of the 2012 Water System Project. Withdrawals from the 2012 Water System Construction Account shall be made only for such purposes as shall have been previously specified in the 2012 Water System Project cost estimates and as shall be approved by the Consulting Engineers for the 2012 Water System Project.

The Issuer's share of any liquidated damages or other moneys paid by defaulting contractors or their sureties, and all proceeds of insurance compensating for damages to the 2012

Water System Project during the period of construction, shall be deposited in the 2012 Water System Construction Account to assure completion of the 2012 Water System Project.

Moneys in the 2012 Water System Construction Account shall be secured by the depository bank in accordance with U.S. Treasury Department Circular 176 and in the manner prescribed by the Laws of the State of Florida relating to the securing of public funds. When the moneys on deposit in the 2012 Water System Construction Account exceed the estimated disbursements on the account of the 2012 Water System Project for the next 90 days, the Issuer may direct the depository bank to invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which shall be subject to redemption at any time at face value by the holder thereof. The earnings from any such investment shall be deposited in the 2012 Water System Construction Account.

When the construction of the 2012 Water System Project has been completed and all construction costs have been paid in full, all funds remaining with the exception of the Rural Development Grant funds, if any, in the 2012 Water System Construction Account shall be deposited in the Interest Account and the Principal Account, as determined by the Issuer, within the Sinking Fund established in the Bond Ordinance, and the 2012 Water System Construction Account shall be closed. The Rural Development Grant funds may only be transferred with the consent of the Government.

All moneys deposited in said 2012 Water System Construction Account shall be and constitute a trust fund created for the purposes stated, and there is hereby created a lien upon such fund in favor of the holders of the Series 2012 Bonds until the moneys thereof shall have been applied in accordance with this Ordinance and the Bond Ordinance.



Section 3.02. Application of Provisions of the Bond Ordinance. The Series 2012 Bonds, herein authorized, shall for all purposes (except as herein expressly provided) be considered additional obligations issued under the authority of Section 3.04(H) of the Bond Ordinance, and shall be entitled to all the protection and security provided therein and shall be entitled to all of security, rights and privileges enjoyed by the Senior Lien Bonds except that (i) the Series 2012 Bonds shall not be secured by the Reserve Account established for the Senior Lien Bonds; (ii) the lien upon the Pledged Revenues securing the Series 2012 Bonds and the Parity Bonds shall be subordinate to the lien upon such Pledged Revenues securing the Senior Lien Bonds; and (iii) the Series 2012 Bonds shall be additionally secured by the Budgeted Funds and the Construction Account.

The covenants and pledges contained in the Bond Ordinance shall be applicable to the Series 2012 Bonds in all respects, provided that the lien upon the Pledged Revenues securing the Series 2012 Bonds and the Parity Bonds shall be subordinate to the lien upon such Pledged Revenues securing the Senior Lien Bonds.

Section 3.03. Contingent Covenant to Budget and Appropriate. Subject to the next paragraph, the Issuer covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay principal of and interest on the Series 2012 Bonds not being paid from other Pledged Revenues as the same shall become due. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are

budgeted and appropriated. The Issuer further acknowledges and agrees that the obligations of the Issuer to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

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 Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holders of the Series 2012 Bonds a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior 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). Anything in this Ordinance to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no holder of any Series 2012 Bonds nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer. Notwithstanding any provisions of this Ordinance or the Series 2012 Bonds to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither this Ordinance nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-

Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 166.241, Florida Statutes.

3.04. Reserve Fund. There is hereby established and maintained within the Reserve Fund, the Series 2012 Bonds Reserve Account (the "Series 2012 Bonds Reserve Account"). Funds in the Series 2012 Bonds Reserve Account shall be used only for the purpose of curing deficiencies in the Sinking Fund with respect to the Series 2012 Bonds and for no other purpose. The holders of the Series 2012 Bonds are not secured by any subaccount of the Reserve Account established for the holders of any additional parity obligations hereafter issued. Following the issuance of the Series 2012 Bonds, the Issuer shall monthly deposit an amount equal to one twelfth of one-tenth of the Maximum Bond Service Requirement of the Series 2012 Bonds until such time as funds and investments therein shall equal the Maximum Bond Service Requirement.

3.05. Short Lived Asset Reserve Fund. The Issuer will establish and hereby covenants and agrees to maintain with a depository in the State of Florida, which is a member of the Federal Deposit Insurance Corporation, and which is eligible under the laws of the State of Florida to receive municipal funds, and shall maintain so long as the Series 2012 Bonds are outstanding, a special fund called the "City of Mexico Beach Water and Sewer Short Lived Asset Reserve Fund", to be used exclusively for the purposes hereinafter mentioned. The Issuer shall transfer \$333.33 on or before the 15th day of each month from the Revenue Fund and deposit to the Short Lived Asset Reserve Fund. Moneys in the Short Lived Asset Reserve Fund shall be used for replacement of short lived assets which have a useful life less than the repayment period of the Series 2012 Bonds.

3.06. Additional Debt. For so long as the Series 2012 Bonds or the Parity Bonds shall be outstanding, the Issuer shall not issue debt secured by a lien on the Pledged Revenues that is senior

to the lien upon such revenues of the Series 2012 Bonds and the Parity Bonds. For so long as the Series 2012 Bonds or the Parity Bonds shall be outstanding, the Issuer shall not issue debt secured by a lien on the Pledged Revenues that is on parity with the lien on such Pledged Revenues securing the Series 2012 Bonds and the Parity Bonds unless it shall comply with the requirements of Section 3.04(H) of the Bond Ordinance, treating the Series 2012 Bonds and the Parity Bonds as Bonds (as such term is defined in the Bond Ordinance), for purposes of said Section 3.04(H) thereof.

#### ARTICLE IV

##### MISCELLANEOUS PROVISIONS

4.01. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Ordinance or of the Bonds issued hereunder.

4.02. Notes Authorized for Interim Financing. Pursuant to authority granted by Section 215.431, Florida Statutes, the Issuer is authorized to issue its negotiable notes from time to time for the purposes authorized by this Ordinance, and for the purpose of obtaining interim financing for the 2012 Water System Project. Prior to the sale of the Series 2012 Bonds authorized by this Ordinance, the Issuer may issue its notes as hereafter provided and as provided in Section 215.431, Florida Statutes. The notes, if any, shall be issued only with the approval of USDA Rural Development. Any such notes authorized by the Issuer shall be issued upon the adoption of a resolution by the Issuer specifying the amount of notes to be issued, the maturity of such notes, the

denomination, date and the rate of interest which shall be borne by such notes which shall not be at a rate greater than the highest rate authorized by law. Any such notes issued may be sold in the manner provided by Section 215.431, Florida Statutes.

4.03. Validation Authorized. The Issuer's Attorney is hereby authorized and directed to institute appropriate proceedings in the Circuit Court in and for Bay County, Florida, for the validation of said Series 2012 Bonds and the proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer the pleadings in such proceedings.

4.04. Bonds Authorized to be Sold at Public or Private Sale. The Series 2012 Bonds may be sold at public or private sale at such rate or rates of interest as shall be determined by the Issuer.

4.05. Conflicts Repealed. All resolutions or ordinances of the City of Mexico Beach, Florida, except Resolutions 2009-03 and 2009-04, adopted by the Issuer on March 30, 2009, which are in conflict or inconsistent with this Ordinance are, to the extent of such conflict or inconsistency hereby repealed as such resolutions or ordinances pertain to the Series 2012 Bonds. Ordinance No. 587, enacted by the Issuer on November 8, 2011, is hereby repealed.

4.06. Tax Covenant. The Issuer covenants to the purchasers of the Series 2012 Bonds provided for in this Ordinance that the Issuer will not make any use of the proceeds of the Series 2012 Bonds at any time during the term of the Series 2012 Bonds which, if such use had been reasonably expected on the date the Series 2012 Bonds were issued, would have caused such bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended. The Issuer will comply with the requirements of the Code and any valid and applicable rule and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Series 2012 Bonds from the gross income of the holders thereof for purposes of federal income taxation.

4.07. Defeasance. If, at any time, the Issuer shall have paid, or shall have made provision for payment of, the principal, interest and redemption premiums, if any, with respect to all of the Series 2012 Bonds herein authorized, then, and in that event, the pledge of and lien on the funds pledged in favor of the owners of the Series 2012 Bonds shall be no longer in effect. For purposes of the preceding sentence, deposit of sufficient cash and/or Federal Securities or bank certificates of deposit fully secured as to principal and interest by Federal Securities (or deposit of any other securities or investments which may be authorized by law from time to time and sufficient under such law to effect such a defeasance) in irrevocable trust with a banking institution or trust company, for the sole benefit of the owners of the Series 2012 Bonds in an aggregate principal amount which, together with interest to accrue thereon, will be sufficient to make timely payment of the principal of and redemption premiums, if any, and interest on the Series 2012 Bonds in accordance with their terms, the paying agents' fees and expenses with respect thereto and any other expenses occasioned by escrow arrangements or provision for redemption, shall be considered "provision for payment". Nothing herein shall be deemed to require the Issuer to call any Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption. If any of the Series 2012 Bonds are owned by the Government, they shall not be defeased without the Government's prior written consent.

4.08. Effective Date. This Ordinance shall take effect upon enactment by the City Council.

**EXHIBIT A**

**FORM OF SUNTRUST BANK CONSENT**

ACKNOWLEDGMENT AND CONSENT OF BONDHOLDER

The undersigned duly authorized representative of SunTrust Bank, as Holder of the \$3,000,000 City of Mexico Beach, Florida Utility System Refunding Revenue Note, Series 2009 (the "Series 2009 Note") and the \$1,000,000 City of Mexico Beach, Florida Capital Improvement Refunding Revenue Note, Series 2009, hereby acknowledges and consents to the issuance of the not to exceed \$2,153,000 City of Mexico Beach, Florida Water and Sewer System Revenue Bonds, Series 2012 (the "Series 2012 Bonds") and any bond anticipation notes issued in anticipation of the receipt of the proceeds of the Series 2012 Bonds as provided in Section 215.431, Florida Statutes (the "Series 2012 BANs"), on parity with the Series 2009 Note.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

SUNTRUST BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_




Enacted at a regular meeting of the City Council of the City of Mexico Beach, Florida this  
13<sup>th</sup> day of March, 2012.

CITY COUNCIL OF THE CITY OF MEXICO  
BEACH, FLORIDA


(SEAL)

By:   
Mayor

ATTEST:

  
Clerk

APPROVED AS TO FORM:

  
City Attorney