COUNCIL ITEM 10B
DATE 8/13/12

ORDINANCE 12-44

AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, AMENDING ORDINANCE NO. 94-29 OF THE CITY ENACTED ON JUNE 27, 1994, AS PREVIOUSLY AMENDED, ENTITLED:

> "AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, PROVIDING FOR THE ACQUISITION OF A UTILITY SYSTEM OWNED BY ST. LUCIE COUNTY, FLORIDA AND LOCATED WITHIN AND WITHOUT THE CITY, WHICH INCLUDES A WATER SYSTEM, A WASTEWATER SYSTEM AND A PROPANE GAS SYSTEM, AND FOR THE ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO SUCH SYSTEM; PROVIDING FOR THE ISSUANCE OF UTILITY SYSTEM REVENUE BONDS OF THE CITY TO FINANCE THE COST THEREOF; PROVIDING FOR THE PAYMENT THEREOF; PROVIDING FOR THE RIGHTS, SECURITY AND REMEDIES OF THE REGISTERED OWNERS OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE."

BY MODIFYING THE REQUIREMENTS FOR DEPOSIT OF A RESERVE ACCOUNT CREDIT FACILITY IN LIEU OF CASH OR EXCHANGE OF CASH FOR DEPOSIT A RESERVE ACCOUNT CREDIT FACILITY INTO THE RESERVE ACCOUNT AS SET FORTH IN SECTION 3.03(C)(3)(b)(i) OF SUCH ORDINANCE AND BY MODIFYING THE REQUIREMENTS OF THE CITY IN THE EVENT THAT THE RATING ON THE CLAIMS PAYING ABILITY A RESERVE ACCOUNT CREDIT FACILITY ISSUER FALLS BELOW CERTAIN RATINGS SET FORTH IN SECTION 3.03(C)(3)(b) OF SUCH ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 166, Part II, Florida Statutes, Section 9.09 of the Charter of the City of Port St. Lucie, Florida ("City"), and other applicable provisions of law (collectively, the "Act"), and pursuant to Section 6.05(c) of Ordinance 94-29 of the City enacted on June 27, 1994, as previously amended and supplemented (the "Original Ordinance"); and amends the Original Ordinance.

Section 2. Definitions. Capitalized terms used but not defined in this Ordinance shall have the same meanings set forth in the Original Ordinance unless the context clearly indicates otherwise.

Section 3. Findings. It is hereby ascertained, determined and declared that:

(A) The City Council of the City, duly enacted Ordinance No. 94-29, referred to by title in the title of above

(B) It is necessary and desirable and in the best interest of the City that Section 3.03(C)(3)(b)(i) of the Original Ordinance be amended to provide for modifications to the requirements for deposit of Reserve Account Credit Facilities in lieu of cash or exchange of cash for deposit of a Reserve Account Credit Facility into the Reserve Account.

(C) It is necessary and desirable and in the best interest of the City that the first and second paragraphs in Section 3.03(C)(3)(b), immediately following subsection (iv) of the Original Ordinance be amended to provide for modifications of the requirements of the City in the event that the claims paying ability of a Reserve Account Credit Facility Issuer falls below certain levels set forth therein.

(D) Section 6.05(c)(1) of the Original Ordinance provides that no consent of any Registered Owners shall be required with respect to modification or amendment if the Credit Facility Issuer has provided its prior written consent.

(E) MBIA Insurance Corporation ("MBIA") is the Credit Facility Issuer with respect to certain Series of the Bonds outstanding under the provisions of the Original Ordinance, which represent 75.17% of all of the Registered Owners of the Bonds outstanding under the provisions of the Original Ordinance.

(F) National Public Finance Guarantee Corporation ("National"), in its capacities as administrator of MBIA pursuant to the Administrative Services Agreement dated as of February 17, 2009 between MBIA and National and as cut-through reinsurer of the Bonds pursuant to the Quota Share Reinsurance Agreement, effective as of January 1, 2009, by and between MBIA and National, consented to the amendments to the Original Ordinance as set forth in this Ordinance.

(G) In addition to the consent required under the Original Ordinance, Assured Guaranty Corp. ("Assured Guaranty"), as Credit Facility Issuer of certain series of Bonds under its agreement regarding bond insurance, requires with respect to amendments or supplements to the Original Ordinance or other financing documents the consent of the Bondholders, Assured Guaranty's prior written consent is also required.

Section 4. Amendments to Original Ordinance. The following provisions of the Original Ordinance are hereby amended as follows:

(A) New definitions are hereby added in alphabetical order to Section 1.02 entitled "DEFINITIONS" to read as follows:

"Investment Grade" shall mean at least "BBB-" by S&P or "Baa3" by Moody's.

"National" shall mean National Public Finance Guarantee Corporation or its successors and assigns.

(B) Subsection (i) of Section 3.03(C)(3)(b) is hereby amended in its entirety to read as follows:

"(i) a surety bond or insurance policy issued to the Paying Agent, as agent of the bondholders, by a company licensed to issue an insurance policy guaranteeing the timely payment of principal of and interest on the Additional Parity Bonds (a "municipal bond insurer") may be deposited in the Reserve Account to meet the Reserve Account Requirement if at the time of such deposit, the claims paying ability of the issuer thereof shall be rated at least "A" by S&P or Moody's."

(C) The last sentence of the paragraph in Section 3.03(C)(3)(b) immediately following Subsection (iv) is hereby amended in its entirety to read as follows:

". . . In the event (a) the Reserve Account Credit Facility Issuer becomes insolvent, or (b) the Reserve Account Credit Facility Issuer defaults in its payment obligations thereunder, or (c) the rating of the claims paying ability of the Reserve Account Credit Facility Issuer falls below Investment Grade by either S&P or Moody's, the obligation to reimburse the Reserve Account Credit Facility Issuer shall be subordinate to the cash replenishment of the Reserve Account."

(D) The second paragraph immediately following Subsection (iv) of Section 3.03(C)(3)(b) is hereby amended in its entirety to read as follows:

"In the event the revolving reinstatement feature described above is suspended or terminated, the City shall either (i) deposit into the Reserve Account an amount sufficient to cause the cash or Authorized Investments on deposit in the Reserve Account to equal the Reserve Account Requirement on all Outstanding Bonds, such amount to be paid over the ensuing five years in equal installments deposited at least semiannually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting any of the requirements set forth above within six months of such occurrence. In the event (1) the Reserve Account Credit Facility Issuer defaults in its payment obligations under the surety bond, insurance policy or letter of credit, or (2) the Reserve Account Credit Facility issuer becomes insolvent, or (3) the Reserve Account Credit Facility Issuer's rating falls below "A" by both S&P and Moody's; provided, however, if National is the Reserve Account Credit Facility Issuer, then if such rating falls below Investment Grade by both S&P and Moody's, the City shall either (i) deposit into the Reserve Account an amount which causes the cash or Authorized Investments on deposit in the Reserve Account, together with other qualifying Reserve Account Credit Facilities, to result in the Reserve Account Value becoming equal to the Reserve Account Requirement on all Outstanding Bonds, such amount to be paid over the ensuing year in equal installments on at least a monthly basis, or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting any of the requirements set forth above within six months of such occurrence."

Section 5. Severability of Invalid Provisions. If any one or more of the provision of this Ordinance should be held to be contrary to any express provision of law or to be contrary to the policy of express law, though not expressly prohibited , or to be against public policy, or should for any reason whatsoever be held invalid, then such provisions shall be null and void and shall be deemed separate from the remaining provisions of, and in no way affect the validity of,

all the other provisions of this Ordinance, the Original Ordinance, or of any Bonds issued pursuant to the provisions of the Original Ordinance.

Section 6. Repealing Clause. All ordinances of the City, including the Original Ordinance, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby superseded and repealed.

Section 7. Effective Date. This Ordinance shall take effect immediately upon the final approval hereof.

Passed and Enacted by the City Council of the City of Port St. Lucie, Florida, this ____ day of August, 2012.

(SEAL)

CITY OF PORT ST. LUCIE, FLORIDA

ATTEST:

_____
JoAnn M. Faiella, Mayor

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

_____
Roger G. Orr, City Attorney

CONSENT TO AMENDMENT

THIS CONSENT TO AMENDMENT (this "Consent") is given this 21st day of June, 2012, by and on behalf of Assured Guaranty Corp. ("Assured Guaranty"), at the request of the City of Port St. Lucie, Florida (the "City"), under and pursuant to the provisions of Ordinance 94-29, enacted by the City Council of the City (the "City Council") on June 27, 1994, as previously amended and supplemented (the "Original Bond Ordinance"), as it relates to the City's outstanding Utility System Revenue Bonds, Series 2009 (the "Insured Bonds"). currently Outstanding in the aggregate principal amount of $110,200,000. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Original Bond Ordinance.

WHEREAS, Assured Guaranty, as issuer of Financial Guaranty Insurance Policy No. D-2009-773, is the Credit Facility Issuer with respect to the Insured Bonds Outstanding under the provisions of the Original Bond Ordinance; and

WHEREAS, by the terms of Section 6.05(a) of the Original Bond Ordinance no material modification or amendment of the Original Bond Ordinance may be made without the consent in writing of the Registered Owners of fifty-one percent (51%) or more in principal amount of the Bonds Outstanding; and

WHEREAS, by the terms of Section 2(d) of that certain Agreement Regarding Bond Insurance dated as of June 1, 2009 between the City and Assured Guaranty relating to the Insured Bonds, in connection with any amendments and supplements to the Original Bond Ordinance that requires the consent of the Bondholders, Assured Guaranty's prior written consent is required; and

WHEREAS, there is currently $441,645,506.15 total aggregate principal amount of Bonds Outstanding under the Original Bond Ordinance; and

WHEREAS, by the terms of Section 6.05(c) of the Original Bond Ordinance, which provides in relevant part, that notwithstanding Section 6.05(a), no consent of any Registered Owners shall be required with respect to modification or amendment as to which modification or amendment the Credit Facility Issuer has provided its prior written consent; and

WHEREAS, the City has requested that Assured Guaranty, as Credit Facility Issuer with respect to the Insured Bonds consent to an amendment to the Original Bond Ordinance the form of which is attached hereto as Exhibit A;

NOW, THEREFORE, Assured Guaranty hereby gives its consent to the amendment to the Original Bond Ordinance in the form attached hereto as Exhibit A. Furthermore, by this Consent, Assured Guaranty is acting for its own benefit and in its own interest, and the City shall be solely responsible for obtaining such other waivers, consents or approvals or taking such other actions, if any, as may be required.

IN WITNESS WHEREOF, Assured Guaranty has caused this Consent to be duly executed on its behalf as of the day and year first above written.

ASSURED GUARANTY CORP.

By: _____
Name: James R. Binette
Title: Director

CONSENT TO AMENDMENT

THIS CONSENT TO AMENDMENT (this "Consent") is given this 7th day of June, 2012, by and on behalf of National Public Finance Guarantee Corporation ("National"), at the request of the City of Port St. Lucie, Florida (the "City"), under and pursuant to the provisions of Ordinance 94-29, enacted by the City Council of the City (the "City Council") on June 27, 1994, as previously amended and supplemented (the "Original Bond Ordinance"), as it relates to the City's outstanding (i) Utility System Revenue Bonds, Series 2001 (the "Series 2001 Bonds"), (ii) Utility System Revenue Bonds, Series 2003 (the "Series 2003 Bonds"), (iii) Utility System Revenue Bonds, Series 2004 (the "Series 2004 Bonds"), (iv) Utility System Refunding Revenue Bonds, Series 2004A (the "Series 2004A Bonds"), (v) Utility System Revenue Bonds, Series 2006 (the "Series 2006 Bonds"), (vi) Utility System Refunding Revenue Bonds, Series 2006A (the "Series 2006A Bonds") and (vii) Utility System Refunding and Improvement Revenue Bonds, Series 2007 (the "Series 2007 Bonds," and, together with the Series 2001 Bonds, the Series 2003 Bonds, the Series 2004 Bonds, the Series 2004A Bonds, the Series 2006 Bonds and the Series 2006A Bonds, the "Insured Bonds"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Original Bond Ordinance.

WHEREAS, MBIA Insurance Corporation ("MBIA"), as issuer of Financial Guaranty Insurance Policy Nos. 353991, 410581, 438921, 45020(1), 481791, 488760 and 433131, is the Credit Facility Issuer with respect to all of the Insured Bonds Outstanding under the provisions of the Original Bond Ordinance; and

WHEREAS, by the terms of Section 6.05(a) of the Original Bond Ordinance no material modification or amendment of the Original Bond Ordinance may be made without the consent in writing of the Registered Owners of fifty-one percent (51%) or more in principal amount of the Bonds Outstanding; and

WHEREAS, there is currently $441,645,506.15 total aggregate principal amount of Bonds Outstanding under the Original Bond Ordinance; and

WHEREAS, by the terms of Section 6.05(c) of the Original Bond Ordinance, which provides in relevant part, that notwithstanding Section 6.05(a), no consent of any Registered Owners shall be required with respect to modification or amendment as to which modification or amendment the Credit Facility Issuer has provided its prior written consent; and

WHEREAS, the total aggregate principal amount of the Insured Bonds currently Outstanding is $331,445,506.15, which is more than fifty-one percent (51%) of the total aggregate principal amount of Bonds Outstanding under the Original Bond Indenture; and

WHEREAS, the City has requested that National, in its capacities as administrator of MBIA pursuant to the Administrative Services Agreement dated as of February 17, 2009 between MBIA and National and as cut-through reinsurer of the Insured Bonds pursuant to the Quota Share Reinsurance Agreement, effective as of January 1, 2009, by and between MBIA and National, consent to an amendment to the Original Bond Ordinance the form of which is attached hereto as Exhibit A;

NOW, THEREFORE, National hereby gives its consent to the amendment to the Original Bond Ordinance in the form attached hereto as Exhibit A.

IN WITNESS WHEREOF, National has caused this Consent to be duly executed on its behalf as of the day and year first above written.

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION

Title: Managing Director

CITY OF PORT ST. LUCIE

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FINANCE DEPARTMENT

RECEIVED

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City Manager's Office

"A City for All Ages"

Memorandum

TO: Gregory J. Oravec, City Manager

From: Edwin M. Fry, Jr., CPA, CGFO, Finance Director/City Treasurer

Date: July 13, 2012

RE: Amendment to Ordinance 94-29, Acquisition of Utility System

BACKGROUND

In 1994 the Port St. Lucie City Council adopted Ordinance 94-29 (Utility Ordinance) providing for the acquisition of a utility system owned by St. Lucie County. Since 1994, the City Council has adopted amending ordinances authorizing the issuance of bonds for expansion of the utility system or refunding of outstanding bonds.

As the City issued bonds for the Utility System, surety bonds were purchased from MBIA to guarantee payment of the principal and interest on the Utility Bonds in the event that insufficient funds were available in the Sinking Fund for principal and interest payments. One amendment to the Utility Ordinance authorizing the issuance of bonds stated "In the event the rating of the claims paying ability of the issuer of a surety bond falls below an "A" rating, the City is required to deposit cash in a reserve account equal to the Reserve Account Requirement on all outstanding bonds". The rating of MBIA, the issuer of the surety bonds for all Utility Bonds, was downgraded by both Moody's and Standard & Poors to less than "A" in 2008. Accordingly, the City restricted $15,000,000 of utility's cash in a debt service reserve account. Additionally, when the City issued the Series 2009 Refunding Utility Bonds, $10,212,834.82 of bond proceeds was deposited in a Debt Service Reserve Account.

Since the surety bonds issued by MBIA are still valid and can be relied upon by the City in the event of a Sinking Fund shortfall, staff has been working with bond counsel, National Public Finance Guarantee Corporation (formerly MBIA), and Assured Guaranty (the bond insurer for the 2009 Refunding Bonds) to eliminate the requirement for the $15,000,000 cash funded debt service reserve. After extensive discussion with Assured and National, staff and bond counsel prepared an Ordinance to amend the Utility Ordinance which would eliminate the requirement for the $15,000,000 cash funded debt service reserve. Assured Guaranty and National Public Finance Guarantee have consented to the proposed Amending Ordinance.

RECOMMENDATION

Staff recommends approval of the attached Ordinance. This will eliminate the requirement to maintain $15,000,000 of cash in the Utility debt service reserve account and allow the use of the funds for other utility purposes.

C: Roger Orr, City Attorney
Jesus Merejo, Utilities Director
Marie Bouloy
Tom O'Reilly

Attachments: Amending Ordinance
Assured Guaranty Consent Letter
National Public Finance Guarantee Consent Letter