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CITY OF COLUMBIA, SOUTH CAROLINA

FIFTH SUPPLEMENTAL ORDINANCE NO. 2007-072

A FIFTH SUPPLEMENTAL ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF CITY OF COLUMBIA, SOUTH CAROLINA, WATERWORKS AND SEWER SYSTEM REVENUE BONDS, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$105,000,000, APPROVING THE EXECUTION AND DELIVERY OF VARIOUS AGREEMENTS AND DOCUMENTS NECESSARY FOR THE CITY TO ENTER INTO A FORWARD STARTING SWAP AGREEMENT IN THE NOTIONAL AMOUNT OF NOT EXCEEDING \$85,000,000; DELEGATING THE AUTHORITY TO THE MAYOR AND CITY MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO SUCH BONDS AND SWAP AGREEMENT; AND OTHER MATTERS RELATING THERETO.

Enacted: September 19, 2007

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA,  
SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in the General Bond Ordinance No. 93-43 (the "General Bond Ordinance") enacted by the City Council (the "Council") of the City of Columbia, South Carolina (the "City"), on May 21, 1993 (such General Bond Ordinance as from time to time amended or supplemented by Supplemental Ordinances being defined in the Ordinance as the "Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires) shall for all purposes of this Fifth Supplemental Ordinance have the respective meanings given to them in the Ordinance and in Section 1 hereof.

"1991 Bond Ordinance" shall mean Ordinance No. 85-117 of the Council of the City enacted on December 11, 1985, as amended and supplemented by Ordinance No. 91-23 of the Council of the City enacted on March 22, 1991.

"Black & Veatch Plan" shall mean the Comprehensive Water and Wastewater Rate Study for the City of Columbia, South Carolina, prepared by Black & Veatch and dated March 2006.

"Bonds of 1993" shall mean the original principal amount \$74,765,000 Waterworks and Sewer System Revenue Bonds, Series 1993, dated May 1, 1993, and outstanding as of the date of this Fifth Supplemental Ordinance in the principal amount of \$38,710,000.

"Bonds of 1999" shall mean the original principal amount \$61,125,000 Waterworks and Sewer System Revenue Bonds, Series 1999, dated October 1, 1999, and outstanding as of the date of this Fifth Supplemental Ordinance in the principal amount of \$8,635,000.

"Bonds of 2001" shall mean the original principal amount \$41,500,000 Water and Sewer System Refunding Revenue Bonds, Series 2001, dated November 1, 2001, and outstanding as of the date of this Fifth Supplemental Ordinance in the principal amount of \$37,975,000.

"Bonds of 2005" shall mean the original principal amount \$60,000,000 Waterworks and Sewer System Bonds, Series 2005, dated June 15, 2005, and outstanding at the date of this Fifth Supplemental Ordinance in the principal amount of \$60,000,000.

"Bonds to be Issued" shall mean the City of Columbia, South Carolina, Waterworks and Sewer System Revenue Bonds, in the aggregate principal amount of not exceeding \$105,000,000, authorized to be issued hereunder, as amended and supplemented by the Supplemental Bond Ordinance.

"First Supplemental Ordinance" shall mean First Supplemental Ordinance No. 1993-44 of the Council of the City enacted on May 21, 1993.

"Fourth Supplemental Ordinance" shall mean Fourth Supplemental Ordinance No. 2005-013 of the Council of the City enacted on May 18, 2005.

"General Bond Ordinance" shall mean Ordinance No. 93-43 of the Council of the City enacted on May 21, 1993.

"Outstanding Parity Bonds" shall mean, collectively, the Bonds of 1993, the Bonds of 1999, the Bonds of 2001 and the Bonds of 2005.

"Projects" shall mean, collectively, the improvements, extensions and enlargements to the System, including any one or more of the projects described in Exhibit A hereto or in the Supplemental Bond Ordinance and such other improvements as the City may deem necessary or incidental to the System.

"Second Supplemental Ordinance" shall mean Second Supplemental Ordinance No. 99-082 of the Council of the City enacted on September 22, 1999.

"Supplemental Bond Ordinance" shall mean the Supplemental Ordinance providing for the specific terms and conditions of the Bonds to be Issued and amending and/or supplementing the provisions of this Fifth Supplemental Ordinance, to be hereafter enacted by the Council of the City.

"Tax Increment Bonds" shall mean, collectively, the original principal amount \$2,350,000 Tax Increment Bonds, Series 1999, of the City, dated April 28, 1999, and outstanding as of the date of this Fifth Supplemental Ordinance in the principal amount of \$\_\_\_\_\_ ; and the original principal amount \$25,000,000 Tax Increment Bonds, Series 2001, of the City, dated November 1, 2001, and outstanding as of the date of this Fifth Supplemental Ordinance in the principal amount of \$8,935,000.

"Third Supplemental Ordinance" shall mean Third Supplemental Ordinance No. 2001-090 of the Council of the City enacted on October 24, 2001.

Section 2. Certain Findings and Determinations. The City hereby finds and determines:

(a) This Fifth Supplemental Ordinance supplements the General Bond Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the General Bond Ordinance.

(b) The Bonds to be Issued constitute and are "Bonds" within the meaning of the quoted word as defined and used in the General Bond Ordinance. As of the date hereof, there are no Senior Lien Bonds (as defined in the General Bond Ordinance) outstanding.

(c) The Net Revenues pledged under the General Bond Ordinance are not encumbered by any lien and charge thereon or pledge thereof, other than (i) the lien and charge thereon and the pledge thereof created by the General Bond Ordinance and the First Supplemental Ordinance for the payment and security of the Bonds of 1993; (ii) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the Second Supplemental Ordinance for the payment and security of the Bonds of 1999; (iii) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the Third Supplemental Ordinance for the payment and security of the Bonds of 2001; and (iv) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the Fourth Supplemental Ordinance for the payment and security of the Bonds of 2005. The City has heretofore issued the Tax Increment Bonds which are and will be secured by a pledge of the Net Revenues of the System, which lien and charge is subordinate and inferior to the lien and charge thereof securing the Outstanding Parity Bonds and the any other Bonds issued pursuant to the General Bond Ordinance on a parity with the Outstanding Parity Bonds.

(d) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The period of usefulness of the System is in excess of forty (40) years from the date hereof.

(f) The estimated Costs of Acquisition and Construction of the Projects is approximately \$80,186,112, to be financed in part with the proceeds of the Bonds to be Issued.

(g) Article III of the General Bond Ordinance provides that one or more Series of Bonds may be issued for such purposes as may be permitted by the Act upon compliance with certain provisions of the General Bond Ordinance for the purposes of paying the Costs of Acquisition and Construction of one or more Projects authorized to be financed under the Act. Bonds issued upon compliance with Section 3.2 and Section 3.3 of the General Bond Ordinance shall be issued on a parity as to the Net Revenues of the System in all respects *inter sese*.

(h) The City expects that the proceeds of the Bonds to be Issued will be applied for the following purposes: (i) improving and enlarging the System, i.e., the Projects; (ii) paying interest coming due on the Bonds to be Issued through a date to be determined, if applicable; (iii) paying the premiums for the purchase of municipal bond insurance, if applicable, and any insurance policy or surety bond, if applicable, for the Debt Service Reserve Fund (or providing cash to fund such Debt Service Reserve Fund), if any, applicable to the Bonds to be Issued; and (iv) paying the Cost of Issuance of the Bonds to be Issued, including but not limited to the termination payment (if any) payable to the counterparty (as defined herein) upon the termination of the Swap in connection with the issuance (if at all) of the Bonds to be Issued as fixed rate obligations.

(i) Based upon information received from the City's Engineering Department, the proceeds of the Bonds to be Issued are estimated to be needed commencing on or around September 2008.

(j) Section 6.7 of the General Bond Ordinance provides that after making payment for the Expenses of Operating and Maintaining the System, and after making payments on the Outstanding Parity Bonds and any other Bonds issued under the General Bond Ordinance, the Revenues of the System shall then be used to meet any other obligations of the City which are or which shall become charges, liens or encumbrances upon the Revenues of the System including, on the date hereof, the Tax Increment Bonds (collectively, the "Junior Obligations"). The City's payment obligations under the hereinafter defined Swap (including any termination payments thereon) will be subordinate and inferior to the payments made or to be made on the aforesaid Bonds or any Junior Obligations (including but not limited to the Tax Increment Bonds) entered into before the execution date of the Swap.

(k) The Council has received advice and guidance from the City's financial advisor, Merchant Capital, L.L.C. (the "Financial Advisor"), concerning the increased use of derivative products by state and local governments as an important interest rate management tool which can allow a governmental entity financial flexibility by providing opportunities to establish an acceptable cost of borrowing by either locking in current market fixed rates to synthetically fix the interest rate payable with respect to a future variable rate bond to be issued by the City or permitting the City to terminate an interest rate swap in the future and issuing fixed rate bonds at acceptable fixed interest rates. City staff and the Council have received several briefings from the Financial Advisor concerning the use of such derivative products in connection with the issuance of the Bonds to be Issued.

(l) The Financial Advisor has advised the City of a debt management vehicle widely used in the financial markets and commonly referred to as a forward starting swap (the "Swap"), whereby the City and the other party thereto (the "counterparty") would agree to make payments to each other thereunder, commencing on and after some future date not to exceed two years after the time the Swap is executed (the "Effective Date"). Under the Swap, as proposed by the Financial Advisor, the City would agree to (1) receive payments from the counterparty based on a variable interest rate per annum equal to The Securities Industry and Financial Markets Association<sup>TM</sup> Municipal Swap Index (formerly The Bond Market Association/PSA Municipal Swap Index) as disseminated by Municipal Market Data, a Thomson Financial Services Company, or its successor ("SIFMA"), and (2) pay to the counterparty a fixed rate of interest per annum to be determined at the time proposals for the Swap are received and accepted by the City, in each case on and after the Effective Date. The notional amount of the Swap ("Notional Amount") is expected to not exceed \$85,000,000 and the Swap is expected to mature on or around February 1, 2038.

(m) The City further expects that the Bonds to be Issued would be issued by the City on or prior to the Effective Date, which Bonds to be Issued would bear interest at variable or fixed interest rates as may then be deemed to be necessary and advisable in the opinion of the City staff, with the advice of the Financial Advisor and bond counsel, and having such other terms and provisions as may be provided by the Supplemental Bond Ordinance to be hereafter enacted by the Council of the City. The Financial Advisor has advised the City staff that, at such time as the City is prepared to issue the Bonds to be Issued, the City would either (1) issue the Bonds to be Issued as

variable rate obligations, leaving the Swap outstanding, and continue to make fixed payments under the Swap or (2) issue the Bonds to be Issued as fixed rate obligations, terminate the Swap and be obligated to make a termination payment to or receive a termination payment from the counterparty, in either case based upon several factors including but not limited to relative interest rates, the value of any termination payment or receipt and the City's desire to issue fixed or variable rate debt.

(n) The advantages to the City of this type of arrangement are: (i) the Swap provides the City with some protection against a rising interest rate market; (ii) future financings will conform to the assumptions made in the Black & Veatch Plan as to the timing and amount of the capital plan and the timing and amount of previously adopted or contemplated rate increases; (iii) the City will not bear any out-of-pocket expenses as a result of execution of the Swap; and (iv) the City's present credit ratings permit the City to conduct a competitive bidding process to determine the most cost-effective Swap.

(o) The Financial Advisor has previously made City staff and the Council aware of the various risks inherent in the use of derivative products generally, including: (i) Basis risk, i.e. the mismatch between actual variable rate debt service and the variable rate index used to determine swap payments; (ii) Tax risk, i.e. the risk created by potential tax events that could affect swap payments; (iii) Interest rate risk, i.e. the manner in which the movement of interest rates over time affects the market value of the swap; (iv) Counterparty risk, i.e. the failure of the counterparty to make required payments; (v) Termination risk, i.e. the need to terminate the transaction in a market that dictates a termination payment by the City; (vi) Market-access risk, i.e. the risk that the City will not be able to enter credit markets or that credit will become more costly; (vii) Rollover or amortization risk, i.e. the mismatch of the maturity of the swap and the maturity of the underlying bonds or a mismatch in the amortization of the swap and the bonds; and (viii) Credit risk, i.e. the occurrence of an event modifying the credit rating of the City or the swap counterparty.

(p) Section 5-7-30 of the South Carolina Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in the municipality, and further, under the South Carolina Supreme Court case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993), a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State.

(q) The City intends to enter into the Swap with the counterparty deemed to be most advantageous to the City as an exercise of (1) its business or proprietary powers, (2) its power to direct the fiscal policies of the System, and (3) its power to enter into contractual arrangements. Further, the City finds that a floating to fixed forward starting interest rate swap agreement is in the best interest of the City at this time and in the current and anticipated market conditions.

(r) It is necessary and in the best interest of the City to authorize the Mayor and the City Manager with the advice and assistance of the Financial Advisor to seek proposals from qualified counterparties for the Swap and to enter into any and all necessary agreements and other

documents required thereby and to hereafter issue the Bonds to be Issued in the principal amount of not exceeding \$105,000,000 in accordance with the General Bond Ordinance and the Supplemental Bond Ordinance in order for the purposes described above in paragraph (h).

Section 3. Authorization of the Projects. There is hereby approved and authorized the undertaking of the Projects. The period of usefulness of the System after the completion of the Projects is expected to be not less than forty (40) years.

Section 4. Authorization of Bonds to be Issued. There is hereby authorized to be issued a Series of Bonds designated "City of Columbia, South Carolina, Waterworks and Sewer System Revenue Bonds" (the "Bonds to be Issued"), with such further designation and/or description to indicate the year in which such Bonds to be Issued are issued and the purposes of the issue, in the aggregate principal amount of not exceeding \$105,000,000. The proceeds of the Bonds to be Issued shall be used for the purposes set forth in Section 2(h) hereof.

It is expected that, at some future date prior to the Effective Date, it will be necessary for the Council to enact the Supplemental Bond Ordinance to authorize the specific terms and conditions of the Bonds to be Issued. The Supplemental Bond Ordinance shall also specify, if other than provided in this Fifth Supplemental Ordinance: (i) the authorized principal amount and designation of Bonds to be Issued; (ii) the purpose or purposes for which the Bonds to be Issued are being issued; (iii) the Projects for which such Bonds to be Issued are being issued; (iv) an estimate of the Costs of Acquisition and Construction for the Projects to be financed by the Bonds to be Issued; (v) the date or dates of the Bonds to be Issued; (vi) the maturity date or dates of the Bonds to be Issued and the mandatory sinking fund redemption provisions (including amounts and due dates) for any of the Bonds to be Issued as term bonds; (vii) the interest rate or rates of the Bonds to be Issued, or in the manner of determining such rate or rates, the initial interest payment date therefor, and the subsequent interest payment dates; (viii) the denominations of and manner of numbering and lettering the Bonds to be Issued; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds to be Issued, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds to be Issued and interest thereon, the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds to be Issued and the use, application and investment, if any, of the proceeds of such sale or other disposition; (xii) whether such Bonds to be Issued will be subject to a Reserve Fund Requirement and the manner of satisfaction of the Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of the General Bond Ordinance; and (xv) any other necessary or desirable provisions not consistent or in conflict with the provisions of the General Bond Ordinance.

Section 5. Approval of Master Agreement, Schedule, Credit Support Annex and Confirmation. The form, terms and provisions of the ISDA Master Agreement (including the Schedule and Credit Support Annex attached thereto) attached hereto as Exhibit B (collectively, the "Master Agreement") be and hereby are approved. The Mayor or City Manager is hereby authorized, empowered and directed to execute, acknowledge and deliver the Master Agreement

and negotiate, execute, acknowledge and deliver any Confirmation evidencing the Swap, all in the name of and on behalf of the City. The Master Agreement is to be in substantially the form attached hereto as Exhibit B and hereby approved, or with such changes therein as shall be approved, upon the advice of counsel to the City, by the officials of the City executing the Master Agreement, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Master Agreement now before this meeting. The City has examined and hereby approves the form of the Master Agreement herewith submitted. The City also approves each and every covenant and agreement contained in the Master Agreement. The City hereby covenants and agrees to carry forth the duties imposed upon it by the Master Agreement.

Section 6. Approval of Invitation to Bid. The form, terms and provisions of an Invitation to Bid attached hereto as Exhibit C be and hereby are approved. The Council hereby ratifies and confirms the prior distribution of the Invitation to Bid by the Financial Advisor to certain qualified financial institutions as recommended by the Financial Advisor.

Section 7. Payment of the Bonds to be Issued and Swap. The Bonds to be Issued, together with the interest thereon, shall be payable, in such coin or currency of the United States of America which at the time of such payment is legal tender for public and private debts, solely from the Net Revenues of the System in accordance with the provisions of the General Bond Ordinance, this Fifth Supplemental Ordinance and the Supplemental Bond Ordinance to be enacted. It is expected that the Bonds to be Issued will be issued on a parity with the pledge of Net Revenues securing the Outstanding Parity Bonds.

The Bonds to be Issued, and the interest thereon, shall not be a debt of the City, nor a charge, lien or encumbrance, legal or equitable, upon any property of the City or upon any income, receipts or revenues of the City other than such of the Net Revenues of the System as are hereby pledged to the payment thereof. In the General Bond Ordinance the City has covenanted that it will not issue any further parity bonds pursuant to the authorization of the Bond Ordinance of 1985 (as defined in the General Bond Ordinance). No recourse shall be had for the payment of the Bonds to be Issued, or the interest thereon, or any part thereof, against the general fund of the City, nor shall the credit or taxing powers of the City be deemed to be pledged to the payment of the principal of and interest on the Bonds to be Issued. The full faith, credit and taxing powers of the State of South Carolina or of the City are not pledged to the payment of the principal of or the interest on the Bonds to be Issued, and the Bonds to be Issued shall never constitute an indebtedness of the City within the meaning of any State constitution provision (other than Article X, Section 14, Paragraph 10, of the South Carolina constitutional provision authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation.

The Swap, and the City's payments thereunder, shall not be a debt of the City, nor a charge, lien or encumbrance, legal or equitable, upon any property of the City or upon any income, receipts or revenues of the City other than such of the Net Revenues of the System as are hereby pledged to the payment thereof. Such pledge and lien shall be junior and subordinate to the liens upon and pledges of Net Revenues created for the payment of the Outstanding Parity Bonds, any Bonds to be issued on a parity therewith, and the Junior Obligations executed prior to the execution

date of the Swap. No recourse shall be had for the City's payment obligations under the Swap or any part thereof, against the general fund of the City, nor shall the credit or taxing powers of the City be deemed to be pledged to the payment by the City of amounts in respect of its obligations under the Swap. The full faith, credit and taxing powers of the State of South Carolina or of the City are not pledged to the payment of any amounts in connection with the Swap, and the Swap shall never constitute an indebtedness of the City within the meaning of any State constitution provision (other than Article X, Section 14, Paragraph 10, of the South Carolina constitutional provision authorizing obligations payable solely from special sources not involving revenues from any tax or license) or statutory limitation.

Section 8. Delegation of Authority. Without further authorization, the Mayor of the City and the City Manager of the City are authorized and empowered to seek and accept proposals from various providers (as the Financial Advisor recommends) for the Swap, to select the counterparty presenting the most advantageous structure for the City, and enter into the Master Agreement with such counterparty. The Mayor and the City Manager of the City shall consult with the Financial Advisor who shall advise the City as to which counterparty has presented the most advantageous Swap structure.

The Council hereby authorizes and directs all of the officers and employees of the City to carry out or cause to be carried out all obligations of the City under the aforesaid Swap and to perform such other actions as they shall consider necessary or advisable in connection with the execution and delivery of the Swap.

Section 9. Further Actions. The Mayor, City Manager, City Clerk, Chief Financial Officer and the City Attorney are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate the execution and delivery of the Swap.

Section 10. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Fifth Supplemental Ordinance.

Section 11. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the City, and any part of any ordinance or resolution, inconsistent with this Fifth Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 12. Effective Date. This Fifth Supplemental Ordinance shall become effective upon its enactment.

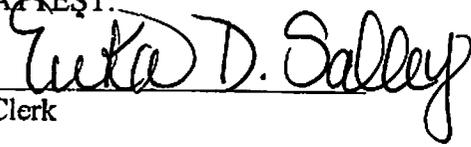
{Signature Page Follows}

Enacted by the City Council of the City of Columbia, South Carolina, this 19<sup>th</sup> day of September, 2007.

CITY COUNCIL OF THE CITY OF COLUMBIA,  
SOUTH CAROLINA

By:   
\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:  
  
\_\_\_\_\_  
Clerk

Date of First Reading:      September 5, 2007  
Date of Second Reading:    September 19, 2007

List of Projects

## WATER CIP

DescriptionCost Estimate

Water Rehab and Fire Protection Upgrades – System Wide

\$9,473,412.00

System Expansion

\$11,462,500.00

New Water Storage Facilities

\$8,300,000.00

Columbia Canal Water Treatment Plant Upgrade

\$15,775,000.00

Total Water CIP

\$45,010,912.00

## SEWER CIP

DescriptionCost Estimate

Sewer Rehab – System Wide

\$5,975,200.00

Metro Waste Water Treatment Plant Upgrade

\$25,000,000.00

System Expansion

\$4,200,000.00

Total Sewer CIP

\$35,175,200.00

TOTAL PROJECTS FUNDED THROUGH BONDS

\$80,186,112.00

Form of ISDA Master Agreement, Schedule  
and Credit Support Annex

ISDA

International Swaps and Derivatives Association, Inc.

SCHEDULE

to the Master Agreement

(Local Currency – Single Jurisdiction)

dated as of \_\_\_\_\_, 2007

between

And CITY OF COLUMBIA, SOUTH CAROLINA

\_\_\_\_\_  
("Party A")

("Party B")

**Part 1. Termination Provisions and Certain Other Matters.**

(a) "Specified Entity" means in relation to Party A for the purpose of:

Section 5(a)(v),	N/A
Section 5(a)(vi),	N/A
Section 5(a)(vii),	N/A
Section 5(b)(ii),	N/A

and in relation to Party B for the purpose of:

Section 5(a)(v),	N/A
Section 5(a)(vi),	N/A
Section 5(a)(vii),	N/A
Section 5(b)(ii),	N/A

(b) The definition of "Specified Transaction" in Section 12 is hereby amended as follows:

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into (i) with respect to Party A, between such party and Party B and (ii) with respect to Party B, between Party B and any other party which is payable from and secured by a pledge of and lien upon Net Revenues, and which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant Confirmation.

(c) **Credit Support Default.** Subparagraph (3) of Section 5(a)(iii) is hereby amended by adding the phrase "(or such action is taken by any person or entity appointed or empowered to operate or act on its behalf)" after the word "Document" in the third line thereof.

(d) **Default Under Specified Transaction.** Subparagraph (2) of Section 5(a)(v) is hereby amended by adding the following text at the end thereof: "(provided, however, that a payment

default shall be deemed to occur only with respect to payments on Specified Transactions in excess of U.S. \$10,000,000”.

- (e) The “**Cross Default**” provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B, provided that, with respect to any Specified Indebtedness of Party B that is not capable of being declared due and payable as a result of the occurrence or existence of a default, event of default or other similar event (however described) under the agreement or instrument relating to such Specified Indebtedness, the words ‘which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable’ shall be deleted from clause (1) of such Section 5(a)(vi) and the words ‘and the bondholders or trustee are permitted to exercise any remedies under the agreements and instruments’ shall be added in its place.”

Section 5(a)(vi) of this Agreement is further amended by the addition of the following at the end thereof: “; provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of the other party: (aa) the event or condition referred to in (1) or the failure to pay referred to in (2) is caused by an error or omission of an administrative or operational nature; and (bb) in respect of (2), (A) funds were available to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party, as the case may be, for making the relevant payment when due and (B) such relevant payment is made within three Local Business Days after notice of such failure is given to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party, as the case may be.”

If such provisions apply:

“**Specified Indebtedness**” will have the meaning specified in Section 12; provided however, with respect to Party B only obligations payable from and secured by a pledge of and lien upon Net Revenues shall constitute “Specified Indebtedness”.

“**Threshold Amount**” means with respect to Party A and Party B, U.S. \$10,000,000 or its equivalent in any other currency or currencies.

- (e) **Bankruptcy.** Clause (6) of Section 5(a)(vii) of this Agreement is hereby amended to read in its entirety as follows:“(6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (or, in the case of Party B, for the System) or (B) in the case of Party B, any Credit Support Provider thereof or any applicable Specified Entity thereof, (I) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or (II) there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;”.

- (f) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:--

“(viii) *Merger Without Assumption.* The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of Party B, all or substantially all of the System) to, another entity (or, without limiting the foregoing, if such party is Party B, an entity such as an organization, board, commission, authority, agency or body succeeding to the principal functions of, or powers and duties granted to, Party B, any Credit Support Provider of such party or any applicable Specified Entity generally or with respect to the System) and, at the time of such consolidation, amalgamation, merger, transfer, or succession:--

(1) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such party, such Credit Support Provider or such Specified Entity under this Agreement or any

Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement:

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) in the case of Party B, the sources of payment for the obligations thereof as set forth in the Schedule are no longer available for the satisfaction of such resulting, surviving, transferee or successor entity's obligations to the other party hereto."

(g) **"Credit Event Upon Merger"** applies to Party A and Party B. Section 5(b)(ii) is hereby deleted in its entirety and replaced by the following:

*"(ii) Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of Party B, all or substantially all of the System) to, another entity (or, without limiting the foregoing, if X is Party B, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, X (or any applicable Specified Entity) generally or with respect to the System), and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X, such Credit Support Provider or such Specified Entity or the resulting, surviving, transferee, or successor entity (which will be the Affected Party) is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action; or"

and for such purpose:

If the applicable party has long term, unsecured and unsubordinated indebtedness ("Long Term Senior Debt") which is publicly rated by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Corporation ("S&P") or any other internationally recognized rating agency (a "Rating Agency"), then the words "materially weaker" in Section 5(b)(ii) shall mean that the Long Term Senior Debt of such party shall be rated lower than Baa1 by Moody's, or lower than BBB+ by S&P or, in the event that the Long Term Senior Debt of such party is not rated by either Moody's or S&P but is rated by a Rating Agency, lower than a rating equivalent to the foregoing by such Rating Agency. In the event of a split rating, the lower rating will prevail.

(h) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A and will not apply to Party B; provided, however, with respect to Party B, where the Event of Default is specified in Section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8) or Section 5(b)(iii) and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, then the Automatic Early Termination provisions of Section 6(a) will apply to Party B.

If an Early Termination Date occurs under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party shall, to the extent permitted by law, fully indemnify the Non-defaulting Party on demand against all expenses, loss, damage or liability that the Non-defaulting Party may incur in respect of this Agreement and each Transaction as a consequence of movements in interest, currency, exchange or other relevant rates or prices or Market Quotations between the Early Termination Date and the Local Business Day on which the Non-defaulting Party first becomes aware the Early Termination Date has occurred under Section 6(a). The Non-defaulting Party may for this purpose convert any expense, loss, damage or liability into the Termination Currency.

(i) **Payments on Early Termination.** For the purpose of Section 6(e):

- (i) Market Quotation will apply.
- (ii) The Second Method will apply.

(j) "Termination Currency" means United States Dollars.

(k) **Additional Termination Event** will apply. The following shall constitute Additional Termination Events with respect to Party A and Party B:

(i) with respect to Party A, if Party A's senior, unsecured, unenhanced debt rating is withdrawn, suspended or reduced below BBB in the case of S&P or below Baa2 in the case of Moody's;

(ii) with respect to Party B, if Party B's unsecured, unenhanced debt rating on the Bonds is withdrawn, suspended or reduced below BBB in the case of S&P or below Baa2 in the case of Moody's; and

(iii) with respect to Party B, if Party B fails to issue the Series 2009 Bonds on or prior to September 15, 2009.

For the purpose of Additional Termination Event (i) above, the Affected Party shall be Party A and for purpose of Additional Termination Events (ii) and (iii) above, the Affected Party shall be Party B.

For purposes of Section 6(b)(iii) and notwithstanding anything to the contrary therein, upon the occurrence of an Additional Termination Event resulting from Party B's failure to timely issue the Series 2009 Bonds, the Affected Party shall designate an Early Termination Date, to be effective within 7 days after September 15, 2009, and provide prompt notice to Party B thereof.

## Part 2. Agreement to Deliver Documents.

Documents to be delivered are:

<b>Party required to deliver document</b>	<b>Form/Document Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by section 3(d) representation</b>
Party A and Party B	Evidence of authority, incumbency and specimen signature of each person executing any document relating to this Agreement or any Confirmation	Execution of Agreement or, as the case may be, any Confirmation	Yes
Party A and Party B	Written opinions of legal counsel to each party (and any Credit Support Provider) reasonably satisfactory in form and substance to the other party	Upon execution of this Agreement and upon the execution of each Confirmation	No
Party A	A written opinion of counsel to Party A satisfactory to Party B in all respects with regard to (A) the authority of Party A to execute and deliver the Credit Support Annex and to perform its obligations thereunder, and (B) the enforceability of the Credit Support Annex against Party A and (C) the validity of Party B's security interest in the Posted Collateral	In the case of (A) and (B), upon the execution of this Agreement and in the case of (C), at the time Party B posts Collateral pursuant to the Credit Support Annex	No
Party A and Party B	A duly executed copy of the Credit Support Document specified in Part 4 of this Schedule	Upon the execution of this Agreement	No

Party A and Party B	In the case of Party A, a copy of the most recent annual report of Party A containing consolidated financial statements for its fiscal year, and, in the case of Party B, a copy of the most recent annual financial statements of the System for its fiscal year, in each case certified without qualification by independent public accountants, and such other public information respecting its condition or operations, financial or otherwise, prepared in accordance with generally accepted accounting principles in the country in which such party is organized.	Upon reasonable request	Yes
Party A and Party B	Such other documents as the other party may reasonably request	Upon request	No

**Part 3. Miscellaneous.**

(a) **Addresses for Notices.** For the purpose of Section 10(a) of this Agreement:

(i) Address for notices or communications to Party A:

TBD

(ii) Address for notices or communications to Party B:

Address: City of Columbia, South Carolina

\_\_\_\_\_ Columbia, SC \_\_\_\_\_

Attention: Finance Director

Facsimile No.: ( ) \_\_\_\_ - \_\_\_\_ Telephone No.: ( ) \_\_\_\_ - \_\_\_\_

(b) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction. The failure of Party A to perform its obligations as Calculation Agent hereunder shall not be construed as an Event of Default or Termination Event, but shall entitle Party B to nominate itself or a third party reasonably selected by Party B as Calculation Agent. Party B or the third party shall thereafter be the Calculation Agent for the purpose of the relevant Transaction until such time as Party A, in good faith, notifies Party B in writing of the date upon which Party A will reestablish itself as Calculation Agent and start again to perform its obligations as Calculation Agent.

(c) **Credit Support Document.** Details of any Credit Support Document:

Party A: The Credit Support Annex dated as of the date hereof, the terms of which are incorporated herein.

Party B: The Credit Support Annex dated as of the date hereof, the terms of which are incorporated herein.

(d) **Credit Support Provider.**

Credit Support Provider does not apply to Party A.

Credit Support Provider does not apply to Party B.

- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York; provided however, (i) the creation, existence and powers of Party B shall be governed by South Carolina law and (ii) the creation, validity and enforceability of Party A's subordinate pledge of and lien upon the Net Revenues shall be governed by South Carolina law.
- (f) **Waiver of Jury Trial.** EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.
- (g) **Netting of Payments.** All amounts on the same date, in the same currency and in respect of the same Transaction shall be netted in accordance with Section 2(c) (ii) of the Agreement.
- (h) **Jurisdiction.** Section 11(b) of the Agreement is deleted in its entirety.

#### **Part 4. Other provisions.**

##### **(a) Interpretation**

Reference is made to the 1992 ISDA U.S. Municipal Counterparty Definitions (the "1992 Muni Definitions") and the 2000 ISDA Definitions (the "2000 Definitions", and , together with the 1992 Muni Definitions, the "Definitions"), as published by the International Swaps and Derivatives Association, Inc. which are hereby incorporated by reference. Any terms used and not otherwise defined herein which are contained in the Definitions shall have the meaning set forth therein (without regard to any amendments thereto subsequent to the date hereof). Any reference in the Definitions to a Swap Transaction shall be deemed to include a Transaction hereunder.

In the event of any inconsistency between the provisions of this Agreement and the Definitions, the provisions of this Agreement shall prevail.

If there is any inconsistency between the provisions of this Schedule and the printed form of the Agreement of which it is part, the provisions set forth in this Schedule will prevail and in the event of any inconsistency between the provisions of a Confirmation, the printed form of the Agreement and this Schedule, the provisions set forth in such Confirmation will prevail.

##### **(b) Telephone recording**

Each party (i) consents to the recording of the telephone conversations of trading and marketing personnel of such party in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of and give notice of such recording to such personnel of it and (iii) agrees that such recordings may be submitted in evidence in any Proceedings relating to this Agreement.

##### **(c) Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality; Interest on Deferred Payments.** Section 2(a)(iii) is hereby amended to read in its entirety as follows:

"(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement."

##### **(d) Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

"Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Sections 3(a) and 3(f), at all times until the termination of

this Agreement) that:-”

- (ii) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:

“**Powers.** It has the power (in the case of Party B, pursuant to applicable law of the State of South Carolina) to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party, and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance;”.

- (iii) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows:

“(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of Party B) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.”

- (iv) For purposes of Section 3, the following shall be added, immediately following paragraph (f) thereof:

- (e) **Eligible Contract Participant.**

Party B is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a).

- (f) This Agreement has been subject to individual negotiation by such party.
- (g) It has entered into this Agreement (including each Transaction evidenced hereby) in conjunction with its line of business (including financial intermediation services) or the financing of its business.
- (h) It is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement or any Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).
- (i) Each party acknowledges that, pursuant to the terms of this Agreement (including, without limitation, Section 6(e) hereof), it may owe a payment to the other party upon the designation of an Early Termination Date hereunder, even in the event such Early Termination Date is the result of an Event of Default with respect to such other party.
- (j) **ERISA Representation.** It continuously represents that it is not (i) an employee benefit plan (hereinafter an “ERISA Plan”), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended, (ii) a person acting on behalf of an ERISA Plan or (iii) a person the assets of whom constitute assets of an ERISA Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.”

- (e) **Additional Representations of Party B.** Party B hereby further represents to Party A (which representations will be deemed to be repeated by Party B at all times until the termination of this Agreement) that:

- (i) This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for the purpose of hedging against an interest rate, payment, investment or other similar risk that arises in connection with, or incidental to, the proper activities of Party B.

- (ii) Party B has taken all steps necessary or advisable and has the authority to pledge and grant a lien upon the Net Revenues as provided in Part 5(f) of this Schedule, and such pledge and lien has been validly created.
  - (iii) Any Transaction entered into pursuant to this Agreement together with any transactions that Party B has or may enter into with Party A and/or with any or all other parties does not and will not violate or exceed any limits or restrictions contained in any authorizations, approvals or ordinances of the Council.
  - (iv) The execution and delivery by Party B of this Agreement, each Confirmation and any other documentation relating hereto, and the performance of Party B of its obligations hereunder and thereunder, are in furtherance, and not in violation, of the municipal purposes for which Party B is organized pursuant to the laws of the relevant state.
  - (v) No Affiliate or other person, firm, corporation, entity, or association may liquidate, borrow, encumber or otherwise utilize the System, except as may be required or permitted by applicable law.
  - (vi) Party B is a state or political subdivision thereof, or an instrumentality, agency or department of either of the foregoing.
- (f) **Security and Source of Payments.** Party B agrees that its obligations hereunder are, and until the termination of this Agreement pursuant to the terms hereof shall remain, secured by a pledge of and lien upon the Net Revenues of Party B, subordinate to the pledges of and liens upon Net Revenues securing the Prior Lien Obligations, and shall be payable from Net Revenues available therefor available for the payment of any obligations of Party B which are or will become charges, liens or encumbrances upon the Revenues (as defined in the Bond Ordinance) of the System referred to in Section 6.7 of the Bond Ordinance. The lien and pledge of the Net Revenues shall be valid and binding from the date hereof and all moneys or properties subject thereto, which are hereafter received, shall immediately be subject to the lien and pledge without physical delivery or further act. The lien and pledge shall be valid and binding against all parties having claim in tort, contract or otherwise against Party B (except for holders of the Prior Lien Obligations) irrespective of whether such parties have notice of the lien and pledge. Notwithstanding anything herein to the contrary, any amounts owed by Party B to Party A pursuant hereto (including any termination payments owed thereto) shall not constitute a general obligation or pecuniary liability of Party B under applicable law, shall not constitute a pledge of the full faith and credit or the taxing power of Party B, and shall be limited to Net Revenues available for such purpose under the Bond Ordinance.
- (g) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.
- (h) **Set-off:** Section 6 of the Agreement is amended to add the following new subsection 6(f):  
 “Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without setoff or counterclaim; provided, however, that upon the designation or deemed designation of any Early Termination Date, in addition to and not in limitation of any other right or remedy (including any right to setoff counterclaim, or otherwise withhold payment) under applicable law or otherwise:  
 The Non-Defaulting Party or non-Affected Party (in either case, “X”) may (but will not be obliged to) without prior notice to Y or any other person set off any obligation owed or due by the Defaulting Party or Affected Party (in either case, “Y”) to X under this Agreement against any obligation owed or due by X (the “Original Obligation”) to Y under this Agreement, and, for this purpose, may convert any currency into another at a market rate to be determined by X. Any such setoff shall automatically satisfy and discharge the Original Obligation to Y to the extent of the amount so set-off and, if the Original Obligation exceeds the obligation to be set off against, the

Original Obligation shall be novated and replaced by an obligation to pay Y only the excess of the Original Obligation over such obligation.

X will give notice to the other party of any set-off effected under this Section 6(f).

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (k) **Confirmations.** Party A will deliver to Party B a Confirmation relating to each Transaction.
- (l) **No reliance.** Each party hereby represents that: it has, in connection with the negotiation, execution and delivery of this Agreement and any Transaction (i) the knowledge and sophistication independently to appraise and understand the financial and legal terms and conditions of each Transaction and to assume the economic consequences and risks thereof and has, in fact; done so as a result of arm's length dealings with the other party; (ii) to the extent necessary, consulted with its own independent financial, legal or other advisors and has made its own investment, hedging and trading decisions in connection with any Transaction based upon its own judgment and the advice of such advisors and not upon any view expressed by the other party; (iii) not relied upon any representations (whether written or oral) of the other party, other than the representations expressly set forth hereunder and in any Credit Support Document and is not in any fiduciary relationship with the other party; (iv) not obtained from the other party (directly or indirectly through any other person) any advice, counsel or assurances as to the expected or projected success, profitability, performance, results or benefits of any Transaction; and (v) determined to its satisfaction whether or not the rates, prices or amounts and other economic terms of any Transaction and the indicative quotations (if any) provided by the other party reflect those in the relevant market for similar transactions.
- (m) **Additional Definitions.** As used in this Schedule, the following terms shall have the following meanings:
  - "**Bond Ordinance**" means Ordinance No. 93-43 of the Council on May 21, 1993, as amended and supplemented from time to time by Supplemental Ordinances (as defined in the Bond Ordinance).
  - "**Council**" means the City Council of Party B.
  - "**Incipient Illegality**" means (a) the enactment by any legislative body with competent jurisdiction over Party B of legislation which, if adopted as law, would render unlawful (i) the performance by such Government Entity of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by such Government Entity with any other material provision of this Agreement relating to such Transaction or (ii) the performance by Party B or a Specified Entity of such Government Entity of any contingent or other obligation which the Government Entity (or such Specified Entity) has under any Credit Support Document relating to such Transaction, (b) any assertion in any proceeding, forum or action by Party B, in respect of such Government Entity or in respect of any entity located or organized under the laws of the state in which such Government Entity is located to the effect that performance under this Agreement or similar agreements is unlawful or (c) the occurrence with respect to Party B or any Specified Entity of such Government Entity of any event that constitutes an Illegality.
  - "**Net Revenues**" shall have the meaning set forth in the Bond Ordinance
  - "**Prior Lien Obligations**" means the Bonds (as defined in the Bond Ordinance) and the TIF Bonds.

**"Series 2009 Bonds"** means not less than \$81,860,000 principal amount of the City's water and sewer system revenue bonds, constituting "Bonds" for purposes of the Bond Ordinance. The Series 2009 Bonds must bear interest, on average, at a floating rate of interest approximately equal to the SIFMA Index, payable on monthly interest payment dates closely corresponding to the Floating Payment Dates specified in the Confirmation, must mature on or after February 1, 2038, and must be outstanding in principal amounts not less than the notional amounts during the periods specified in the Notional Amount Schedule attached as Exhibit \_\_\_ to the Confirmation.

**"System"** means the Waterworks and Sewer System of Party B.

**"TIF Bonds"** means the \$2,350,000 original principal amount Tax Increment Bonds, Series 1999, of Party B, dated April 28, 1999, and the \$25,000,000 original principal amount Tax Increment Bonds, Series 2001, of Party B, dated November 1, 2001.

- (n) **Severability.** If any term, provision, covenant, or condition of this Agreement, or the application thereof to any party or circumstance, shall be held to be illegal, invalid or unenforceable (in whole or in part) for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if the Agreement had been executed with the illegal, invalid or unenforceable portion eliminated, so long as the Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Agreement and the deletion of such portion of this Agreement will not substantially impair the respective benefits or expectations of the parties of this Agreement. It shall in particular be understood that this Severability clause shall not affect the "single agreement" concept of provision 1 (c) of the Agreement.

**CITY OF COLUMBIA, SOUTH CAROLINA** \_\_\_\_\_

By:

By:

Name:

Name:

Title:

Title:

Form of Invitation to Bid



## INVITATION TO BID

**\$81,860,000\***

### CITY OF COLUMBIA, SOUTH CAROLINA WATERWORKS AND SEWER SYSTEM

**City Ratings:**

**Moody's: Aa2**

**S&P: AA**

### INTEREST RATE SWAP TRANSACTION TERM SHEET

Merchant Capital, L.L.C. (the "Bidding Agent"), on behalf of the City of Columbia, South Carolina (the "City"), is inviting pre-qualified financial institutions to bid for the interest rate swap transaction (the "Swap") described herein.

**Bid Date:** September 20, 2007  
**Bid Period:** 11:00 to 11:10 a.m. Eastern  
**Award Time:** Upon conclusion of the Bid Period  
**Document Settlement Date:** October 4, 2007

#### **General Information**

1. The City plans to enter into an amortizing forward starting swap in order to hedge the future cost of capital associated with its waterworks and sewer system capital improvement plan. Under the swap, the City shall pay a fixed rate of interest on a semi-annual basis and shall receive a floating rate of interest equal to the SIFMA index on a monthly basis (as more particularly described herein).
2. The fixed rate for the Swap shall be determined through a competitive bidding process as detailed herein. Potential providers should submit a bid in the form of the lowest fixed rate, truncated to three (3) decimal places that the City would pay on the Swap. The City intends to award the Swap to a single counterparty.
3. Potential providers must be pre-approved by the City and must conform to the ISDA Master Agreement, Schedule, and Credit Support Annex attached hereto as Exhibit B prior to the bid date (unless modified pursuant to the following sentence). Any changes to the swap documents must be approved by the City prior to 5:00 pm Eastern September 18, 2007. Draft swap documents shall be distributed by the winning provider. The winning provider shall receive an enforceability opinion from City's counsel in form attached hereto as Exhibit C. Counsel to the City is McNair Law Firm, P.A. (Contact: Dan McLeod at (864) 271-4940 regarding the form of enforceability opinion or other legal questions).
4. Bids shall be taken via email to the Bidding Agent beginning at 11:00 am Eastern and continue through 11:10 am Eastern. Potential providers may submit a bid not more than two (2) times. The last bid received by the City from each potential provider during the Bid Period shall be considered each provider's firm offer of the fixed rate the City would pay on the Swap. Only those bids submitted to the Bidding Agent ([trey.monroe@merchantcapital.com](mailto:trey.monroe@merchantcapital.com)) during the Bid Period shall be considered conforming bids. Merchant Capital, LLC shall give a verbal award on behalf of the City immediately following the conclusion of the Bid Period. During the Bid Period, potential providers will not be informed of the status of their bid or the status of any other potential provider's bid.
5. The City reserves the right to waive informalities and to reject any and all bids for any reason in its sole discretion.
6. No fees will be paid and no expenses reimbursed by the City except as described herein.

\* Throughout this document, an asterisk denotes information is preliminary and subject to change.

**SUMMARY OF SWAP TRANSACTION:**

**NOTIONAL AMOUNT:** \$81,860,000\*, subject to reduction as set forth in Exhibit A.  
**TRADE DATE:** September 20, 2007  
**EFFECTIVE DATE:** September 15, 2009  
**TERMINATION DATE:** February 1, 2038, subject to Automatic Early Termination

**AUTOMATIC EARLY TERMINATION:** The Swap will terminate at market automatically within 7 calendar days after the Effective Date, unless the City issues not less than \$81,860,000 principal amount of its water and sewer system revenue bonds (the "Series 2009 Bonds"), constituting "Bonds" for purposes of Ordinance No. 93-43, enacted by the City Council of the City on May 21, 1993 (as amended and supplemented), on or prior to the Effective Date. The Series 2009 Bonds must bear interest, on average, at a floating rate of interest approximately equal to the SIFMA Index, payable on monthly interest payment dates closely corresponding to the Floating Payment Dates, must mature on or after February 1, 2038, and must be outstanding in principal amounts not less than the notional amounts during the periods specified in the Notional Amount Schedule in Exhibit A.

**BUSINESS DAYS:** New York

**FLOATING AMOUNTS:**

**FLOATING RATE PAYER:** Winning Provider  
**PAYMENT DATES:** One Business Day prior to each Period End Date, commencing September 30, 2009.  
**PERIOD END DATES:** Monthly, the first calendar day of each month, commencing October 1, 2009, prior to and including the Termination Date. No adjustment  
**FLOATING RATE:** USD-SIFMA Municipal Swap Index or its successor  
**SPREAD:** None  
**DAY COUNT FRACTION:** Actual/Actual  
**RESET DATES:** Each Thursday  
**METHOD OF AVERAGING:** Weighted Average  
**COMPOUNDING:** Inapplicable  
**CALCULATION AGENT:** Winning Provider

**FIXED AMOUNTS:**

FIXED RATE PAYER: City of Columbia, South Carolina  
PAYMENT DATES: February 1 and August 1, commencing February 1, 2010,  
subject to the Following Business Day Convention  
PERIOD END DATES: February 1 and August 1. No Adjustment  
FIXED RATE: [x.xxx]%  
DAY COUNT FRACTION: 30/360

**OTHER PROVISIONS:**

BASIS OF AWARD: Lowest fixed rate payable by the City on the Swap. Bids should be submitted to the Bidding Agent: c/o Trey Monroe at:

**[trey.monroe@merchantcapital.com](mailto:trey.monroe@merchantcapital.com)**

Bids will not be accepted by any other means. Please direct questions regarding the bid process or the swap documents to Trey Monroe at (404) 504-2763. All questions or revisions to the swap documents must be addressed prior to 5:00 pm Eastern September 18, 2007.

ADMINISTRATIVE COSTS: TBD

PROVIDER CERTIFICATIONS: The winning provider must provide a certificate in a form satisfactory to Bond Counsel that is consistent with the example attached hereto as Exhibit D.

**EXHIBIT A**

**NOTIONAL AMOUNT SCHEDULE\***

<b>From and Including</b>	<b>To But Excluding</b>	<b>Notional Amount</b>
9/15/2009	2/1/2022	\$81,860,000
2/1/2022	2/1/2023	81,380,000
2/1/2023	2/1/2024	80,880,000
2/1/2024	2/1/2025	80,355,000
2/1/2025	2/1/2026	79,805,000
2/1/2026	2/1/2027	79,230,000
2/1/2027	2/1/2028	78,685,000
2/1/2028	2/1/2029	77,610,000
2/1/2029	2/1/2030	76,480,000
2/1/2030	2/1/2031	75,295,000
2/1/2031	2/1/2032	67,340,000
2/1/2032	2/1/2033	59,010,000
2/1/2033	2/1/2034	50,280,000
2/1/2034	2/1/2035	41,135,000
2/1/2035	2/1/2036	31,555,000
2/1/2036	2/1/2037	21,520,000
2/1/2037	2/1/2038	11,010,000

**EXHIBIT B**

**FORM OF ISDA MASTER AGREEMENT, SCHEDULE, AND CREDIT SUPPORT ANNEX**

**EXHIBIT C**

**FORM OF LEGAL OPINION OF COUNSEL TO THE CITY**

**EXHIBIT D**

FORM OF SWAP PROVIDER'S CERTIFICATE

This Certificate is furnished by the undersigned in connection with the ISDA Master Agreement and Schedule to the ISDA Master Agreement dated as of October 4, 2007 (collectively, the "Agreement") between the CITY OF COLUMBIA, SOUTH CAROLINA ("City"), and \_\_\_\_\_ ("Swap Provider") and the interest rate swap transaction entered into on September 20, 2007 (the "Trade Date") evidenced by the Confirmation dated as of September 20, 2007 ("Swap Transaction"), with an effective date of September 15, 2009 ("Effective Date").

In connection with the foregoing, the Swap Provider represents as follows:

(i) The fixed rate payable by the City does not exceed the fixed rate the Swap Provider would have quoted on the Trade Date to other persons to enter into a reasonably comparable interest rate swap, if any, taking into full account the terms and conditions of the Swap Transaction, including fees paid at the request of the City described in paragraph (v) below and with a counterparty similarly situated to the City, if any, taking into full account the security and sources of payment from the City to the Swap Provider, the risk profile of such counterparty, structuring, market, and other transaction factors and other terms inherent in the Swap Transaction.

(ii) Amounts paid or payable by the City pursuant to the Swap Transaction do not include any payment for underwriting, credit enhancement, liquidity or other services unrelated to the Swap Provider's performance of its obligations under the Swap Transaction, except as described in paragraph (v) below.

(iii) No payments have been or are expected to be made by the Swap Provider to the City or by the City to the Swap Provider in connection with the Swap Transaction except as set forth in the Swap Transaction and enumerated in paragraph (v) below.

(iv) Neither the Swap Provider nor any affiliate of the Swap Provider has made or expects to make any payments to any third parties in connection with the Swap Transaction, including any payments to third parties for the benefit of the City, except as described in paragraph (v) below.

(v) At the request of the City, the Swap Provider has agreed to pay fees in connection with the Swap Transaction in the following amounts: (a) \$ \_\_\_\_\_ to Merchant Capital, LLC as Financial Advisor to the City and (b) \$ \_\_\_\_\_ to McNair Law Firm, P.A. as Counsel to the City. If the Swap Provider had not been required to pay such fees, the Swap Provider would have quoted a fixed rate on the Swap Transaction on the Trade Date equal to X.XXX%.

We understand that this Certificate will be relied upon by the City in making certain of the representations contained in the Tax Compliance Certificate to be executed by the City in connection with the issuance of the Bonds, and we further understand that McNair Law Firm, P.A. may rely upon this certificate, among other things, in providing their opinions with respect to the exclusion from gross income of the interest on the Bonds from federal income taxes. The undersigned understands and acknowledges that the City and Bond Counsel may rely on this Certificate, among other things, in concluding that the Swap constitutes a "qualified hedge" for purposes of Treasury Regulation § 1.148-4(h). Nevertheless, the Swap Provider makes no representations as to the legal sufficiency of the information set forth in this certificate for purposes of complying with the Internal Revenue Code of 1986 or for any other purpose.

Dated: \_\_\_\_\_, 2007