

**ORDINANCE NO.: 2012-069**

**AN ORDINANCE TO AUTHORIZE THE RENEWAL AND EXTENSION OF THE LETTER OF CREDIT SECURING THE \$81,860,000 ORIGINAL PRINCIPAL AMOUNT CITY OF COLUMBIA, SOUTH CAROLINA, WATERWORKS AND SEWER SYSTEM REVENUE BONDS SERIES 2009, AND TO APPROVE THE FORM AND TERMS OF, AND AUTHORIZE THE EXECUTION OF, SUPPLEMENTS OR AMENDMENTS TO THE LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, THE REMARKETING AGREEMENT AND THE TENDER AGENT AGREEMENT, AND OTHER AGREEMENTS AS NECESSARY OR DESIRABLE; AND OTHER MATTERS RELATED THERETO**

**BE IT ORDAINED** by the Mayor and City Council of the City of Columbia, South Carolina this 7th day of August, 2012, as follows:

**Section 1. Findings and Determinations.** The Council hereby finds and determines:

A. The City is an incorporated municipality located in Richland County and Lexington County and as such possesses all powers granted to municipalities by the Constitution and laws of this State.

B. Pursuant to Section 5-5-10, Code of Laws of South Carolina 1976, as amended (the "South Carolina Code"), the City has selected the Council-Manager form of government and is governed by a Council composed of a Mayor and six council members which constitute the governing body of the City.

C. Pursuant to the General Bond Ordinance No. 93-43 enacted by the City Council of the City (the "Council") on May 21, 1993, as amended (as so amended, the "General Bond Ordinance"), including as amended and supplemented particularly by the Fifth Supplemental Ordinance No. 2007-072 enacted by the Council on September 19, 2007 and Seventh Supplemental Ordinance No. 2009-83 enacted by the Council on August 19, 2009 (collectively, the "Supplemental Ordinances" and, together with the General Bond Ordinance, the "Bond Ordinance"), the City has heretofore issued its \$81,860,000 original principal amount City of Columbia, South Carolina, Waterworks and Sewer System Revenue Bonds, Series 2009, all of which are presently outstanding (the "2009 Bonds").

D. Payment of the principal and interest on the 2009 Bonds is secured by a letter of credit (the "Original Letter of Credit") issued by U.S. Bank National Association (in such capacity, the "Bank") simultaneous with the issuance of the 2009 Bonds; however, the Original Letter of Credit is scheduled to expire by its terms on August 31, 2012.

E. The City has heretofore prepared and distributed a Request for Offers dated May 8, 2012, as supplemented (as so supplemented, the "RFO"), inviting financial institutions to submit proposals to provide a replacement credit facility for the Original Letter of Credit upon the expiration thereof. The City received several proposals responsive to the RFO, including a proposal from the Bank (the "U.S. Bank Proposal"), to renew and extend the Original Letter of Credit for an additional three-year period. The City has evaluated such proposals and determined that the U.S. Bank Proposal is the most beneficial in terms of several factors, including pricing, ease of execution, cost and term. Upon advice of its financial advisor and bond counsel, the City believes it is now in the best interest of the City for the Council to approve the renewal and extension of the Original Letter of Credit, as described in the U.S. Bank Proposal.

**Section 2. Approval of Proposal.** The U.S. Bank Proposal to renew and extend the Original Letter of Credit for an additional three-year period, is hereby accepted. In the event of a conflict in the terms and provisions of the U.S. Bank Proposal and this Ordinance, the Amendment to Reimbursement Agreement, the Amendment to Remarketing Agreement and the Amendment to Tender Agreement (as such terms are hereinafter defined) and any other documents authorized hereunder (collectively, the "Other Documents"), the terms and provisions of this Ordinance, the Amendment to Reimbursement Agreement, the Amendment to Remarketing Agreement, the Amendment to Tender Agreement and the Other Documents shall prevail.

**Section 3. Approval of Amendment to Reimbursement Agreement.** The form, terms and provisions of the First Amendment to Letter of Credit and Reimbursement Agreement, between the City and the Bank, a copy of which is attached as Exhibit A (the "Amendment to Reimbursement Agreement"), be and is hereby approved. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver the Amendment to Reimbursement Agreement in the name and on behalf of the City, and thereupon to cause the Amendment to Reimbursement Agreement to be delivered to the Bank. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the Amendment to Reimbursement Agreement as may be appropriate. The execution of the Amendment to Reimbursement Agreement shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Amendment to Reimbursement Agreement now before this meeting. Any amendment to the Amendment to Reimbursement Agreement shall be executed in the same manner.

**Section 4. Appointment of Remarketing Agent; Approval of Amendment to Remarketing Agreement and Amendment to Tender Agreement.** The Mayor or the City Manager, or either one of them acting alone, is hereby authorized and directed for and on behalf of the City to appoint one or more eligible investment banks or financial institutions to serve as Remarketing Agent for the 2009 Bonds, upon satisfaction of the conditions set forth in the Bond Ordinance. The forms, terms and provisions of the Amendment No. 1 to Remarketing Agreement, between the City and the Remarketing Agent, a copy of which is attached as Exhibit B (the "Amendment to Remarketing Agreement"), and the Amendment No. 1 to Tender Agent Agreement, among the City, U.S. Bank National Association, as tender agent (the "Tender Agent"), and the Remarketing Agent, a copy of which is attached as Exhibit C (the "Amendment to Tender Agreement"), be and are hereby approved. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver the Amendment to Remarketing Agreement and the Amendment to Tender Agreement in the name and on behalf of the City, and thereupon to cause the Amendment to Remarketing Agreement and the Amendment to Tender Agreement to be delivered to the other parties thereto. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the Amendment to Remarketing Agreement and the Amendment to Tender Agreement as may be appropriate. The execution of the Amendment to Remarketing Agreement and the Amendment to Tender Agreement shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Amendment to Remarketing Agreement and the Amendment to Tender Agreement now before this meeting. Any amendment to the Amendment to Remarketing Agreement and the Amendment to Tender Agreement shall be executed in the same manner.

**Section 5. Authorization.** The Mayor, the City Manager, the Finance Director and the Treasurer, or any two of them acting together, and the City Clerk (as applicable) are fully empowered and authorized to take such further action and to execute and deliver or consent to such

additional documents as may be reasonably requested by the Bank and the Tender Agent to effect the delivery of the Amendment to the Reimbursement Agreement, the Amendment to Remarketing Agreement and the Amendment to Tender Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor or the City Manager, or either one of them acting alone, shall approve, is hereby fully authorized. The authorization conferred herein shall extend to and include, but not be limited to, the documents and certificates reasonably expected to be necessary for the closing thereof, including, but not limited to, federal tax certificates, a general certificate of the City, any designation of City representatives, and such other documents required to be executed in connection therewith.

Section 6. Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings, to the extent of such conflict, are hereby repealed and this Ordinance shall take effect and be in full force from and after its enactment.

Section 8. Effective Date. This Ordinance shall be effective upon its adoption by the City Council for the City of Columbia, South Carolina.

This Ordinance shall be forthwith codified in the Code of City Ordinances in the manner required by law.

CITY OF COLUMBIA, SOUTH CAROLINA

Mayor



(SEAL)

ATTEST:



Clerk

First Reading: 7/10/2012

Second Reading: 8/7/2012

**EXHIBIT A**  
**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT**

**FIRST AMENDMENT**

**to**

**LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**

**by and between**

**CITY OF COLUMBIA, SOUTH CAROLINA**

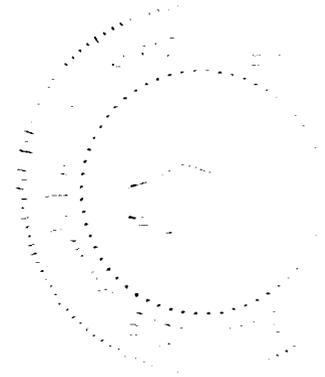
**and**

**U.S. BANK NATIONAL ASSOCIATION**

**Dated August 7th, 2012**

**Relating to**

**City of Columbia, South Carolina  
Waterworks and Sewer System Revenue Bonds  
Series 2009**



This **FIRST AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**, by and between **CITY OF COLUMBIA, SOUTH CAROLINA**, an incorporated municipality located in Richland and Lexington Counties, South Carolina (including its successors and assigns, the "*Issuer*"), and **U. S. BANK NATIONAL ASSOCIATION**, a national banking association (including its successors and assigns, the "*Bank*"), is dated August 7th, 2012 (the "*First Amendment*"). Terms used herein with initial capital letters and not otherwise defined shall have the respective meanings attributed thereto in the Agreement (as defined below).

## **I. RECITALS**

WHEREAS, the Issuer has previously authorized, issued and delivered its \$81,860,000 Waterworks and Sewer System Revenue Bonds, Series 2009 (the "*Bonds*"), all of which are presently outstanding; and

WHEREAS, in connection with the Bonds, the Issuer and the Bank had entered into that certain Letter of Credit and Reimbursement Agreement, dated September 2, 2009 (the "*Agreement*"), pursuant to which the Bank issued its direct pay letter of credit L/C #: SLCPPDX04813 (the "*Letter of Credit*") to pay the principal of, interest on, and Purchase Price (as defined in the Letter of Credit) due in connection with the Bonds; and

WHEREAS, the Letter of Credit has a Stated Expiration Date of August 31, 2012 and the Issuer has requested, and the Bank has agreed, to an extension of said Stated Expiration Date as more fully set forth herein and the parties hereto have agreed to certain other changes to be made to the Agreement as more fully set forth herein, including revising the Commitment Fee, amending certain provisions relating to increased costs and modifying certain ratings requirements.

NOW, THEREFORE, in consideration of the respective agreements contained herein and in the Agreement and for other valuable consideration the receipt of which is hereby acknowledged, and intending to be legally bound, the Issuer and the Bank hereby agree as follows.

## **II. AMENDMENTS**

The Agreement is hereby amended as follows:

- (1) **Section 1.1 of the Agreement is hereby amended by the addition of the following definitions which are to be situated within Section 1.1 on an alphabetical basis:**

**"Dodd-Frank Act"** means the Dodd-Frank Wall Street Reform and Consumer Protection Act and all regulations, guidelines and directions in connection therewith, as the same may be amended from time to time.

**"Fee Letter"** means that certain letter from the Bank to the Issuer, dated the First Amendment Effective Date, setting forth certain fees, including the Commitment Fee and the Letter of Credit Fees, and other compensation to which the Bank shall be entitled pursuant to the terms thereof and the terms of this Agreement.

**"First Amendment"** means the First Amendment to Letter of Credit and Reimbursement Agreement, by and between the Issuer and the Bank, dated August [ ], 2012.

**"First Amendment Effective Date"** means August [ ], 2012.

- (2) **Section 1.1 of the Agreement is hereby amended by deleting the definitions of “Agreement,” “Commitment Fee,” “Fee Payment Date,” “Letter of Credit Fees” and “Stated Expiration Date” and replacing same as follows:**

“Agreement” means this Letter of Credit and Reimbursement Agreement, together with the Fee Letter, as the same may from time to time be amended, supplemented or otherwise modified in accordance with its terms.

“Commitment Fee” has the meaning assigned to that term in the Fee Letter.

“Fee Payment Date” has the meaning assigned to that term in the Fee Letter.

“Letter of Credit Fees” has the meaning assigned to that term in the Fee Letter.

“Stated Expiration Date” means August 31, 2015 or any extension of such date, as agreed to by the Bank and the Issuer in accordance with the terms of Section 2.1 hereof.

- (3) **Section 1.1 of the Agreement is hereby further amended by deleting the definitions of “Other Covenants” and “Other Debt Documents” and not replacing either of said definitions.**

- (4) **Section 2.2(c)(i) of the Agreement is hereby amended by deleting the first sentence thereof in its entirety and replacing it with the following:**

“Notwithstanding the foregoing, each unreimbursed Tender Drawing will automatically convert into a Term Loan beginning on the Term Loan Amortization Start Date; *provided* that on the Term Loan Amortization Start Date, (A) none of the conditions that would result in a Term Loan Amortization End Date shall have occurred and be continuing and (B) the long-term ratings assigned to the Issuer’s Parity Debt (without regard to any third party or other credit enhancement) is at or above “A3” (or its equivalent), in the case of Moody’s, and “A-” (or its equivalent), in the case of S&P.”

- (5) **Section 2.2(e) of the Agreement is hereby deleted in its entirety and replaced with the following:**

“(e) Fees. The Authority agrees to pay to the Bank the Commitment Fee, the Letter of Credit Fees and other amounts on the dates and in the amounts set forth in the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement between the Issuer and the Bank, and all obligations of the Issuer set forth under the Fee Letter shall be construed as Bank obligations payable under this Agreement.”

- (6) **Section 2.6(b) of the Agreement is hereby amended to add the following paragraph after the first paragraph thereof as follows:**

“Notwithstanding the foregoing provisions of this Section 2.6, (i) all laws, treaties, rules, regulations, guidelines or directives in connection with the Dodd Frank Act, regardless of the date enacted, adopted or issued, and (ii) all laws, treaties, rules, regulations, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date enacted, adopted or issued, that, in either case, results in an increase of costs, reduces the rate of return or causes other decreased benefits to the Bank or any Participant will, if certified by the Bank in a written notice to

the Issuer, become an obligation of the Issuer to the Bank and each Participant for which compensation may be sought pursuant to this Section 2.6 that is payable no earlier than thirty (30) days following the date the Issuer is first given such notification by the Bank thereof.”

**(7) Section 5.1(a)(i) of the Agreement is hereby deleted in its entirety and replaced with the following:**

“The Issuer will furnish or cause to be furnished to the Bank as soon as available and, in any event, within two hundred ten (210) days after the end of each Fiscal Year, (A) a copy of the audited annual financial statements of the Issuer, which shall include a summary of the operating revenues, operating expenses, nonoperating revenues and expenses and change in net assets of the System for such Fiscal Year, (B) the balance sheet as of the end of such Fiscal Year, and (C) the report of independent auditors with respect to said financial statements certifying that said financial statements fairly present the financial position of the Issuer and that their audit has been conducted in accordance with GAAP;”

**(8) Section 5.1(j) of the Agreement is hereby amended by the deletion of sub-clauses (ii) and (iii) thereof and the inclusion of the following therein:**

“(i) To the extent that the consent, approval or permission of the holders of Bonds (as defined in the Original Bond Ordinance) is required in order for any covenant(s) or the related definitions incorporated by reference herein pursuant to clause (j)(i) above be amended, supplemented, waived or otherwise modified, said covenants or related definitions, or both, may be so amended, supplemented, waived or modified without the consent of the Bank; *provided, however,* that the provisions of the Ordinance and the Seventh Supplement (and the related definitions) relating to the security and the rights, duties and obligations of the Bank thereunder, whether as provider of the Letter of Credit or as an owner from time to time of Bank Bonds, may not, notwithstanding the foregoing provisions of this clause (j)(ii), be amended, supplemented, waived or otherwise modified without the prior written consent of the Bank.”

**(9) Section 6.1(i) of the Agreement is hereby deleted in its entirety and replaced with the following:**

“(i) a Rating Agency shall have (i) withdrawn the long-term rating assigned to the Issuer’s Parity Bonds, (ii) suspended the long-term rating assigned to the Issuer’s Parity Bonds, or (iii) lowered its long-term rating assigned to the Issuer’s Parity Bonds to “Baa1” or below, in the case of Moody’s, or “BBB+” or below, in the case of S&P (or to the equivalent rating then in effect with respect to Moody’s or S&P), respectively; *provided, however,* that any withdrawal, suspension or downgrade described in the foregoing provisions of this Section 6.1(i) shall not be deemed an Event of Default hereunder if said withdrawal, suspension or downgrade, as the case may be, shall be attributable to the withdrawal, suspension or downgrade of the long-term ratings assigned to any third party credit enhancement provider; or”

**(10) Section 7.4(a) of the Agreement is hereby deleted in its entirety and replaced with the following:**

“(a) To the extent permitted by applicable law and solely from available Net Revenues of the System, the Issuer hereby indemnifies and holds harmless the Bank from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever which the Bank may incur (or which may be claimed against the Bank by any person or entity whatsoever) by reason of or in connection with the sale or remarketing of the Bonds (including, without

limitation, by reason of any inaccuracy in any material respect, or any untrue statement or alleged untrue statement of any material fact, contained in the Official Statement or any other disclosure material prepared by or on behalf of the Issuer for dissemination to holders or potential holders of Bonds with respect to the Bonds, or by reason of the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances under which they were made, not misleading), the execution and delivery of this Agreement or the Remarketing Agreement by the Issuer or the enactment of the Ordinance, including the Seventh Supplement, by the Issuer or the issuance of the Letter of Credit or the transfer of the Letter of Credit, or payment or failure to pay under the Letter of Credit; *provided, however*, that the Issuer shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses (i) to the extent, but only to the extent, caused by the willful misconduct or negligence of the Bank, as the case may be, (ii) relating to the information included in the Official Statement regarding DTC or its affiliates, the information describing registration and transfer of Bonds while said Bonds are registered with DTC and the information set forth in the section entitled "BOOK-ENTRY-ONLY SYSTEM", and (iii) relating to the information set forth in the section entitled "THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT FACILITY AGREEMENT" OR IN Appendix E – "THE INITIAL CREDIT PROVIDER" in the Official Statement."

**(11) Section 7.6 of the Agreement is hereby deleted in its entirety and replaced with the following:**

"To the extent permitted by law and solely from available Net Revenues of the System, the Issuer shall pay any and all fees and expenses, including taxes (other than any taxes measured by or based upon the income of the Bank), fees, charges and recording costs, if any, payable or incurred by the Bank as an out-of-pocket expense incurred other than in the ordinary course of business in connection with any payment made by the Bank under or with respect to the Letter of Credit or in connection with the execution, delivery, performance, administration and enforcement of the Bonds and the Financing Documents, and any amendments, modifications, supplements, consents and waivers with respect thereto including, without limitation, the reasonable fees and expenses of Bank Counsel, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees, expenses, taxes, costs and charges, if any; *provided* that the Bank agrees promptly to notify the Issuer of any such fees, expenses and taxes, if any; and *provided further* that the fees and expenses of Bank Counsel in connection with the execution and delivery of this Agreement and the Letters of Credit shall not exceed \$45,000 plus reasonable expenses of Bank Counsel."

**(12) Schedule I to the Agreement is hereby deleted in its entirety.**

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Unless otherwise specifically set forth herein, references hereinafter to the Agreement shall be deemed to be references to the Agreement as amended hereby and by the Fee Letter and terms defined in the Agreement shall, unless otherwise modified in this First Amendment, be used herein as defined therein.

### III. CONDITIONS TO DELIVERY OF THIS FIRST AMENDMENT

The amendments to the Agreement provided for in Section II hereof shall become effective on the First Amendment Effective Date; *provided*, that each of the following conditions shall be fulfilled to the satisfaction of the Bank:

(a) Documentation. The Bank shall have received:

(i) executed counterparts of this First Amendment and the Fee Letter, in each case, signed by an Authorized Representative,

(ii) a copy of the amendment to the Letter of Credit in substantially the form set forth as Exhibit A hereto,

(iii) a copy of the ordinance of the Issuer's governing body relating to this First Amendment and the Fee Letter,

(iv) a signature and incumbency certificate, dated the First Amendment Effective Date, confirming that the Authorized Representative of the Issuer executing this First Amendment and the Fee Letter are authorized to do so pursuant to the ordinance referred to in sub-clause (ii) above,

(v) an opinion of counsel to the Issuer regarding the enforceability of the Fee Letter, and

(v) all other legal matters pertaining to the execution and delivery of this First Amendment, the amendment to the Letter of Credit and the Fee Letter shall be satisfactory to the Bank and the execution and delivery hereof and thereof by the Bank shall constitute conclusive evidence that all such legal matters have been completed to the satisfaction of the Bank.

(b) Representations and Warranties True.

(i) (A) The representations and warranties of the Issuer contained in Section 4 (other than Section 4(f) and 4(g)) of the Agreement, and (B) the representations and warranties contained in this First Amendment shall, in each case, be true and correct in all material respects with the same effect as though made on and as of the First Amendment Effective Date, except to the extent a representation or warranty relates specifically to an earlier date (in which case, such representation or warranty shall have been true and correct in all material respects as of such earlier date).

(ii) In addition to the foregoing representations, the Issuer hereby represents and warrants as follows:

(A) the execution, delivery and performance by the Issuer of this First Amendment and the Fee Letter are within its powers, have been duly authorized by all necessary action and do not contravene any law or any contractual restriction binding on or affecting the Issuer,

(B) the Issuer has performed, and is in compliance with, all agreements and conditions set forth in the Agreement, the Financing Documents, the Remarketing Agreement

and the Tender Agent Agreement it is required to satisfy in connection therewith and the Agreement, as amended by this First Amendment, and the Fee Letter each constitutes the legal, valid and binding obligation of the Issuer and each is enforceable against the Issuer in accordance with their respective terms,

(C) no event has occurred and is continuing under the Agreement which constitutes an Event of Default or a Default under the Agreement,

(D) no further authorization, approval or other action by, and no notice to or filing with, any Governmental Authority (provided, however, that the Issuer makes no representation with respect to compliance with state securities or "blue sky" laws of any jurisdiction) is required for the due execution, delivery and performance by the Issuer of this First Amendment and the Fee Letter and the Issuer has provided, or will cause to be provided, written notice of this First Amendment to each of Moody's and S & P,

(E) (1) the financial statements of the Issuer (which includes financial information regarding the System), as of and for the period ending June 30, 2011, present fairly the financial position of the Issuer and the System as of such date and the revenues, expenses and changes in fund balances and financial position for the period then ended, all of which has been prepared in accordance with GAAP, and (2) since June 30, 2011, there has been no material adverse change in the business, properties, condition (financial or otherwise) or operations, present or prospective, of the Issuer or the System, nor any increase in its long-term debt which has not been described in an official statement, dated February 22, 2012, of the Issuer (the "2012 Official Statement"), or otherwise disclosed to the Bank in writing, and

(F) except as described in the 2012 Official Statement and except as otherwise disclosed to the Bank, no litigation is pending (or, to the knowledge of the Issuer threatened in writing) against the Issuer or the System in any court or agency or other administrative body (either State of South Carolina or federal) (i) in any manner questioning the validity or payment of principal of or interest on bonds or other obligations of the Issuer similar to the Bonds, or (ii) questioning the constitutionality of any statute, or the validity of any proceedings including, without limitation, the Original Bond Ordinance or the Seventh Supplement authorizing the issuance of the Bonds and the execution, delivery and performance of the Issuer's obligations under the Agreement, or (iii) materially questioning or affecting the legality or constitutionality of the collection by the Issuer of the Revenues securing the Bonds and the application thereof in accordance with the Ordinance, or (iv) questioning or affecting the validity of the pledge by the Issuer of the Net Revenues as described in Section 2.5 of the Agreement, or the validity or the enforceability of any provisions of the Agreement, the Original Bond Ordinance, the Seventh Supplement, the Bonds or the Remarketing Agreement, or the obligations of the Issuer arising under or pursuant to the Agreement, or (v) questioning or affecting the legal existence of the Issuer, or (vi) which might in any material respect adversely affect the transactions contemplated in the Agreement or by the Ordinance or the Official Statement, or (vii) contesting the titles of any Issuer officials to their respective offices.

(c) Absence of Certain Events. The Bank shall have determined, as of the First Amendment Effective Date, that (i) there shall not have occurred any material adverse change to the assets, condition (financial or otherwise) or operations of the Issuer since the date of the most recent financial information provided to the Bank pursuant to Section 5.1(a)(i) of the Agreement, except as otherwise disclosed by the Issuer to the Bank, on or prior to the First Amendment Effective Date, and (ii) no change shall have occurred in any law, rule or regulation or in any interpretation thereof that would make it illegal for the Bank to

execute and deliver this First Amendment and Fee Letter or to execute, deliver and perform its obligations under the Letter of Credit as the same has been amended by the Notice of Extension.

(d) Fees. The Issuer shall have paid, in immediately available funds, on or before the First Amendment Effective Date, the amounts due on such date pursuant to the Fee Letter.

(e) Other Approvals. The Bank shall have received such other approvals, opinions, certificates, instruments and documents as it may reasonably request.

#### **IV. HEADINGS**

Section headings in this First Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this First Amendment.

#### **V. COUNTERPARTS**

This First Amendment may be executed in one or more counterparts, each of which taken together shall constitute one original and all of which shall constitute one and the same instrument.

#### **VI. SEVERABILITY**

In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

#### **VII. MISCELLANEOUS**

(a) The parties hereto acknowledge and confirm that, from and after the First Amendment Effective Date, any reference in the Agreement, the Fee Letter, the Financing Documents, the Remarketing Agreement or the Tender Agent Agreement to the "Agreement" shall mean and refer to, collectively, the Agreement, as amended hereby, and the Fee Letter.

(b) From and after the First Amendment Effective Date, the Agreement shall remain in full force and effect and unaffected hereby except as set forth herein.

(c) This First Amendment shall be subject to Section 7.8 of the Agreement, as if the text of said Section was set forth herein in full.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their respective duly authorized signatories as of the day and year first written above.

**CITY OF COLUMBIA, SOUTH CAROLINA**

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

**U.S. BANK NATIONAL ASSOCIATION**

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

**EXHIBIT A**

U.S. BANK NATIONAL ASSOCIATION  
111 SW FIFTH AVENUE, SUITE 500  
PORTLAND, OREGON 97204

**AMENDMENT TO LETTER OF CREDIT**

DATE: AUGUST [ ], 2012

**AMENDMENT NUMBER 1**

**IRREVOCABLE DIRECT PAY LETTER OF CREDIT NUMBER: SLCPDX04813**

**BENEFICIARY:**

U.S. BANK NATIONAL ASSOCIATION,  
AS PAYING AGENT  
1441 MAIN STREET, SUITE 775  
COLUMBIA, SOUTH CAROLINA 29201  
ATTENTION: CORPORATE TRUST  
DEPARTMENT

**APPLICANT:**

CITY OF COLUMBIA, SOUTH CAROLINA  
1737 MAIN STREET  
COLUMBIA, SOUTH CAROLINA 29217  
ATTENTION: INTERIM CITY MANAGER

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED LETTER OF CREDIT IS AMENDED AS FOLLOWS:

THE STATED EXPIRATION DATE IS EXTENDED TO AUGUST 31, 2015

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL (503)275-6059.

**U.S. BANK NATIONAL ASSOCIATION**

BY: \_\_\_\_\_  
NAME: NANCY R. TOUSIGNANT

**EXHIBIT B**

**AMENDMENT NO. 1 TO REMARKETING AGREEMENT**

This **AMENDMENT NO. 1 TO REMARKETING AGREEMENT**, dated August \_\_, 2012 (“Amendment”), is entered into among the **CITY OF COLUMBIA, SOUTH CAROLINA** (“City”), \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”).

WHEREAS, the City has heretofore executed a Remarketing Agreement dated September 2, 2009 (the “Original Agreement”), among the City, Morgan Keegan & Company, Inc., as Remarketing Agent, and Grigsby & Associates, Inc., as co-Remarketing Agent, related to the \$81,860,000 Waterworks and Sewer System Revenue Bonds, Series 2009 (“Bonds”) issued pursuant to the authority of the General Bond Ordinance No. 93-43, enacted by the City Council of the City (the “City Council”), on May 21, 1993 (“General Ordinance”), as amended and supplemented, including as supplemented particularly by a Fifth Supplemental Ordinance No. 2007-72, enacted by the City Council on September 19, 2007, and Seventh Supplemental Ordinance No. 2009-83 enacted by the City Council on August 19, 2009 (“Seventh Supplemental Ordinance”) (collectively, “Supplemental Ordinance” and together with the General Ordinance, as otherwise amended, collectively “Ordinance”); and

WHEREAS, the City now desires to replace \_\_\_\_\_ as [co-]Remarketing Agent and otherwise make certain amendments to the Original Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Agreement; and

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the City, \_\_\_\_\_ and \_\_\_\_\_ hereby covenant, agree and bind themselves as follows:

**1. *Removal of [Co-]Remarketing Agent and Appointment of [Co-]Remarketing Agent.***

(a) Subject to the terms and conditions herein contained and pursuant to Section 25 of the Seventh Supplemental Ordinance and Section 3.01 of the Original Agreement, the City hereby removes \_\_\_\_\_ as [co-]Remarketing Agent for the Bonds and appoints \_\_\_\_\_ in replacement therefor, effective upon the date hereof. \_\_\_\_\_ hereby accepts such appointment, as [exclusive][co-] remarketing agent (“[Co-]Remarketing Agent”) in performing the [respective functions of determining the Daily Interest Rate, the Weekly Interest Rate, the Bond Interest Term Rate and the Long-Term Interest Rate, from time to time and the remarketing of the Bonds from time to time in the secondary market subsequent to the initial offering, issuance and sale of the Bonds][functions described in the Original Agreement], all as provided herein more fully.

(b) The City shall promptly provide notice of the removal and replacement of \_\_\_\_\_ as [co-]Remarketing Agent as permitted under the Seventh Supplemental Ordinance and the Original Agreement.

**2. *Representations, Warranties, Covenants and Agreements of the [Co-]Remarketing Agent.***

The [Co-]Remarketing Agent, by its acceptance hereof, represents, warrants, covenants and agrees with the City as follows:

(a) The [Co-]Remarketing Agent is a corporation authorized by law to perform all the duties imposed upon it as [Co-]Remarketing Agent by the Seventh Supplemental Ordinance and the Original Agreement;

(b) The [Co-]Remarketing Agent complies with or satisfies all requirements of the Seventh Supplemental Ordinance to act as “[Co-]Remarketing agent” with respect to the Bonds and has full power and authority to take all actions required or permitted to be taken by the [Co-]Remarketing Agent by or under, and to perform and observe the covenants and agreements on its part contained in, the Seventh Supplemental Ordinance and the Original Agreement, including, specifically:

(i) to carry out the provisions of the Original Agreement; and

(ii) to hold all moneys delivered to it in connection with the Original Agreement for the purchase of Bonds as agent and bailee of, and in escrow for the benefit of, the person or entity which shall have so delivered such moneys until such moneys are delivered to the Tender Agent;

(c) The [Co-]Remarketing Agent will keep such books and records with respect to its duties as [Co-]Remarketing Agent as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Paying Agent and Tender Agent, the City and the Credit Provider or Liquidity Provider, if any, at all reasonable times; and

(d) The [Co-]Remarketing Agent hereby designates its principal office as \_\_\_\_\_.

3. ***Payment of Fees and Expenses.***

Section 9.01 of the Original Agreement is hereby amended by deleting paragraph (b)(i) thereof in its entirety and replacing it with the following text:

(i) So long as the Bonds bear interest at the Daily Interest Rate or the Weekly Interest Rate, the City shall pay for the services of the Remarketing Agent hereunder an annual fee equal to \_\_\_\_\_ basis points (\_\_\_\_\_% ) per annum of the Outstanding Bonds. Such fees shall be payable quarterly in arrears on December 1, 2009, and on the first day of each March 1, June 1, September 1, and December 1 thereafter. Upon termination of this Remarketing Agreement, fees will be paid only for that number of days during such period during which this Remarketing Agreement is in effect. Fees shall be paid upon receipt of an invoice and shall be based on months of 30 days and years of 360 days.

4. ***Miscellaneous.***

(a) Except as otherwise specifically provided in the Original Agreement, as amended by this Amended (as so amended, the “Remarketing Agreement”), all notices, demands and formal actions under the Remarketing Agreement shall be in writing and mailed, telegraphed or delivered to the addresses specified in the Seventh Supplemental Ordinance for the delivery of notices. The parties hereto may, by notice given under the Remarketing Agreement, designate other addresses to which subsequent notices, requests, reports or other communications shall be directed.

(b) The Remarketing Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The terms “successors” and “assigns” shall not include any purchaser of any of the Bonds merely because of such purchase. The issuer of a Credit Facility securing the Bonds shall be a beneficiary of the obligations of the City, the Paying Agent and Tender Agent and the Remarketing Agent hereunder, as though a signatory hereto, and may enforce such obligations in its own name and behalf.

(c) All of the representations, warranties and covenants of the City and the Remarketing Agent in the Remarketing Agreement shall remain operative and in full force and effect, regardless of:

- (i) any investigation made by or on behalf of the Remarketing Agent or the City,
- (ii) delivery of and any payment for any Bonds hereunder, or
- (iii) termination or cancellation of the Remarketing Agreement.

(d) Section headings have been inserted in the Remarketing Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of the Remarketing Agreement and will not be used in the interpretation of any provisions of the Remarketing Agreement.

(e) If any provision of the Remarketing Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of the Remarketing Agreement invalid, inoperative or unenforceable to any extent whatever.

(f) The Remarketing Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(g) The Remarketing Agreement shall be governed by and enforced under the laws of the State of South Carolina.

IN WITNESS WHEREOF, the City, \_\_\_\_\_ and \_\_\_\_\_ have caused this Amendment No. 1 to Remarketing Agreement to be executed in their respective names by officers thereof duly authorized thereunto.

**CITY OF COLUMBIA, SOUTH CAROLINA**

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 \_\_\_\_\_  
 as Remarketing Agent

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 \_\_\_\_\_  
 as Co-Remarketing Agent

By \_\_\_\_\_  
 Its \_\_\_\_\_

## EXHIBIT C

### AMENDMENT NO. 1 TO TENDER AGENT AGREEMENT

This Amendment No. 1 to Tender Agent Agreement (the "Amendment") dated August \_\_, 2012, among U.S. Bank National Association, as Paying Agent (in such capacity, the "Paying Agent") and as Tender Agent (in such capacity, the "Tender Agent"), the City of Columbia, South Carolina (the "City"), \_\_\_\_\_, as Remarketing Agent ("\_\_\_\_") and \_\_\_\_\_, as co-Remarketing Agent ("\_\_\_\_\_").

WHEREAS, the City has heretofore issued its \$81,860,000 Waterworks and Sewer System Revenue Bonds, Series 2009 (the "Bonds"), pursuant to the General Bond Ordinance No. 93-43 enacted by the City Council of the City (the "City Council") on May 21, 1993, as amended (as so amended, the "Bond Ordinance"), as supplemented by the Fifth Supplemental Ordinance No. 2007-072 enacted by the City Council on September 19, 2007 and the Seventh Supplemental Ordinance No. 2009-83 enacted by the City Council on August 19, 2009 (collectively, the "Seventh Supplemental Ordinance" and together with the Bond Ordinance, the "Ordinance"); and

WHEREAS, the City has heretofore executed the Tender Agent Agreement dated September 2, 2009 (the "Original Agreement"), with the Paying Agent, the Tender Agent, Morgan Keegan & Company, Inc., as Remarketing Agent, and Grigsby & Associates, Inc., as co-Remarketing Agent; and

WHEREAS, the City has executed the Amendment No. 1 to Remarketing Agreement of even date herewith (the "Amendment to Remarketing Agreement"), with \_\_\_\_\_ and \_\_\_\_\_, to remove and replace the [co-]Remarketing Agent for the Bonds and otherwise make certain amendments to the Remarketing Agreement dated September 2, 2009 (as so amended by the Amendment to Remarketing Agreement and as amended and supplemented from time to time hereafter, the "Remarketing Agreement"); and

WHEREAS, the City desires to amend the Original Agreement in order to reflect the current Remarketing Agent and [co-]Remarketing Agent for the Bonds;

NOW, THEREFORE, in consideration of the premises and in order to provide for the coordination of said arrangements, the parties hereby agree as follows:

1. Pursuant to the Amendment to Remarketing Agreement, as of the date hereof, \_\_\_\_\_ has been appointed and shall hereafter serve as Remarketing Agent for the Bonds and \_\_\_\_\_ has been appointed and shall hereafter serve as [co-]Remarketing Agent for the Bonds. All references in the Original Agreement shall be hereafter interpreted and construed with respect to the current parties hereto.

2. All references in the Original Agreement to the "Credit Facility Provider Agreement" shall mean "the Letter of Credit and Reimbursement Agreement dated September 2, 2009, as amended by the First Amendment dated August [15], 2012, each between the City and U.S. Bank National Association, and as the same may be amended and supplemented from time to time".

3. All references in the Original Agreement to the "Remarketing Agreement" shall mean the Remarketing Agreement as defined herein.

4. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of South Carolina.

5. This Amendment may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Tender Agreement to be duly executed and delivered as of the date first above written by their respective officers thereunto duly authorized.

U.S. BANK NATIONAL ASSOCIATION, as Paying Agent and Tender Agent

By: \_\_\_\_\_  
Vice President

CITY OF COLUMBIA, SOUTH CAROLINA

By: \_\_\_\_\_  
Steven A. Gantt  
Its: City Manager

\_\_\_\_\_,  
as Remarketing Agent

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_,  
as co-Remarketing Agent

By: \_\_\_\_\_  
Its: \_\_\_\_\_