

ORDINANCE NO.: 2020-056

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, A FIRST AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT AND OTHER AGREEMENTS AS NECESSARY OR DESIRABLE; AND OTHER MATTERS RELATED THERETO

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

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 presently secured by a letter of credit (the "Letter of Credit") issued in 2015 by Sumitomo Mitsui Banking Corporation (the "Bank"), acting through its New York Branch; however, the Letter of Credit is scheduled to expire by its terms on August 31, 2020.

E. The City received a proposal from the Bank (the "Proposal") to renew and extend the Letter of Credit for an additional five-year period on substantially the same terms as the Letter of Credit. The administrative staff of the City has evaluated the Proposal and determined that it is the most beneficial in terms of several factors, including pricing, 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 Letter of Credit, as described in the Proposal.

Section 2. Approval of Proposal. The Proposal to renew and extend the Letter of Credit is hereby ratified, accepted and approved. In the event of a conflict in the terms and provisions of the Proposal and this Ordinance, the Reimbursement Agreement, the First Amendment (as such terms are defined herein) and any other amendments or documents authorized hereunder

(collectively, the “Other Documents”), the terms and provisions of this Ordinance, the First Amendment and the Other Documents shall prevail.

Section 3. Approval of First 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 “First Amendment”), 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 First Amendment in the name and on behalf of the City, and thereupon to cause the First Amendment 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 and the City’s bond counsel, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the First Amendment as may be appropriate. The execution of the First Amendment shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of First Amendment attached as Exhibit A.

Section 4. Authorization. The Mayor, the City Manager, the Assistant City Manager for Finance and Economic Services and the Finance Director, or any one of them acting alone, and the City Clerk (as applicable) are fully empowered and authorized to take such further action and to negotiate, execute and deliver or consent to such additional documents as may be reasonably requested by the Bank or by one or more Paying Agents, Registrars, Custodians, Remarketing Agents and Tender Agents (as such terms are defined in the Bond Ordinance) to effect the delivery of the First Amendment 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, the City Manager, the Assistant City Manager for Finance and Economic Services and the Finance Director, or any 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, fee letters, remarketing supplements, federal tax certificates, a general certificate of the City, any designation of City representatives, amendments to the remarketing agreement, tender agent agreement, continuing disclosure undertakings or disclosure dissemination agent agreements and such other documents required to be executed in connection therewith. The Council hereby ratifies, confirms and approves the actions of the Mayor, the City Manager, the Assistant City Manager for Finance and Economic Services and the Finance Director heretofore undertaken with regard to the matters authorized herein.

Section 5. 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 6. 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 7. Effective Date. This Ordinance shall be effective upon its enactment by the City Council for the City of Columbia, South Carolina.

Enacted by the City Council of the City of Columbia, South Carolina, this 21st day of July, 2020.



(SEAL)

CITY COUNCIL OF THE CITY OF COLUMBIA,
SOUTH CAROLINA

Mayor

ATTEST:

Clerk

First Reading: June 16, 2020

Second Reading: July 21, 2020

EXHIBIT A

**FIRST AMENDMENT TO LETTER OF CREDIT
AND REIMBURSEMENT AGREEMENT**

FIRST AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

This First Amendment to Letter of Credit and Reimbursement Agreement (this "*Amendment*") dated [____], 2020 (the "*First Amendment Effective Date*"), is between the CITY OF COLUMBIA, SOUTH CAROLINA (the "*Issuer*") and SUMITOMO MITSUI BANKING CORPORATION, acting through its New York Branch, and its successors and assigns (the "*Bank*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the Issuer and the Bank have previously entered into the Letter of Credit and Reimbursement Agreement dated as of August 26, 2015 (as amended, restated, supplemented or otherwise modified to date, the "*Agreement*"), pursuant to which the Bank issued the Irrevocable Transferable Direct-Pay Letter of Credit No. LG/MIS/NY-085889 dated August 25, 2015 (the "*Letter of Credit*"), originally issued in the aggregate amount not to exceed \$83,178,731.00, supporting the Issuer's Waterworks and Sewer System Revenue Bonds, Series 2009 (the "*Bonds*");

WHEREAS, pursuant to Section 7.1 of the Agreement, the Agreement may be amended by a written amendment thereto, executed by the Issuer and the Bank; and

WHEREAS, the Issuer has requested that the Bank extend the Stated Expiration Date and make certain other amendments to the Agreement, and the Bank has agreed to extend the Stated Expiration Date and make such other amendments to the Agreement subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

SECTION 1. AMENDMENTS.

Upon satisfaction of the conditions precedent set forth in Section 3 hereof, the Agreement shall be amended as follows:

1.01. The definition of the defined term "*Stated Expiration Date*" set forth in Section 1.1 of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

"Stated Expiration Date" means August 29, 2025, or any extension of such date, as agreed to by the Bank and the Issuer in accordance with Section 2.1 hereof.

1.02. Article I of the Agreement is hereby amended by the addition of the new defined term “*Confidential Information*” to be inserted in its appropriate place in the alphabetical sequence and to read as follows:

“*Confidential Information*” means any confidential information regarding the Issuer, the Bank or any affiliate of the Bank including, without limitation, address and account information, e-mail addresses, telephone numbers, facsimile numbers, names and signatures of officers, employees and signatories.

1.03. Section 5.1 of the Agreement is hereby amended by adding thereto a new paragraph (m) to appear in the appropriate alphabetical sequence and to read as follows:

(m) Waiver of a Future Right to Immunity. In the event that after the date hereof the Issuer becomes entitled by law to invoke immunity with respect to any *ex contractu* actions arising from its contractual obligations under this Agreement and the Fee Letter and such law allows the Issuer to waive its right to immunity with respect thereto, the Issuer hereby agrees to waive such right to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) or (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be made subject to in any suit, action or proceedings relating to this Agreement or the Fee Letter in the courts of any jurisdiction and no such immunity (whether or not claimed) may be attributed to the Issuer or its revenues or asset.

1.04. Section 7 of the Agreement is hereby amended by adding thereto a new Section 7.14 to appear in the appropriate numerical sequence and to read as follows:

7.14. EMMA Postings. In the event the Issuer files with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system, or its successor (“*EMMA*”) this Agreement or any description of the materials thereof or notice of any agreement to any covenants, events of default, remedies, priority rights or other similar terms, either voluntarily or as required pursuant to a continuing disclosure agreement or Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “*Rule*”) (each such posting, an “*EMMA Posting*”), the Issuer shall (i) provide the Bank with a copy of each EMMA Posting prior to submitting or posting on EMMA and (ii) shall not file or permit the filing of any EMMA Posting that includes Confidential Information. The Issuer acknowledges and agrees that although the Bank may request review, edits or redactions of

such materials prior to filing, the Bank is not responsible for the Issuer's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure agreement or any applicable securities or other laws, including, but not limited to, those relating to the Rule.

SECTION 2. REQUEST FOR EXTENSION OF STATED EXPIRATION DATE.

The Issuer hereby requests that the Bank extend the Stated Expiration Date to August 29, 2025, and the Bank agrees to such request and will deliver to the Paying Agent an Extension Amendment to the Letter of Credit substantially in the form attached hereto as Exhibit A to effectuate such extension.

SECTION 3. CONDITIONS PRECEDENT.

This Amendment shall become effective on the First Amendment Effective Date subject to the satisfaction of or waiver by the Bank of all of the following conditions precedent (such satisfaction to be evidenced by the Bank's execution and delivery of this Amendment):

3.01. Delivery by the Issuer to the Bank of an executed counterpart of this Amendment.

3.02. Receipt by the Bank of (i) a closing certificate of the Issuer and (ii) a certificate of the Issuer, certifying the names and true signatures of the officers of the Issuer authorized to sign this Amendment.

3.03. Payment directly to Chapman and Cutler LLP, legal counsel to the Bank within thirty (30) days of receipt of an invoice therefrom, of its reasonable legal fees and expenses in an amount not to exceed \$10,000.

3.04. Payment to the Bank of an amendment fee of \$5,000 pursuant to paragraph (b)(2) of the Fee Letter.

3.05. All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF THE ISSUER.

4.01. The Issuer hereby represents and warrants that the following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the Issuer contained in Section 4 of the Agreement and in each of the Financing Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date and except that the representations contained in Section 4(f) of the Agreement shall

be deemed to refer to the most recent financial statements of the Issuer delivered to the Bank pursuant to Section 5.1(a)(i) of the Agreement).

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

4.02. In addition to the representations given in Section 4 of the Agreement, the Issuer hereby represents and warrants as follows:

(a) The execution, delivery and performance by the Issuer of this Amendment and the performance by the Issuer of the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Issuer.

(b) No further authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Issuer of this Amendment or the performance by the Issuer of the Agreement, as amended hereby.

(c) This Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency, liquidation or similar situation of the Issuer, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

SECTION 5. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to the Agreement, as hereby amended. 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. THIS AMENDMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *PROVIDED* THAT THE DUTIES AND OBLIGATIONS OF THE ISSUER UNDER THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf

copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the First Amendment Effective Date.

CITY OF COLUMBIA, SOUTH CAROLINA

By: _____
Name: _____
Title: _____

SUMITOMO MITSUI BANKING CORPORATION, acting
through its New York Branch

By: _____
Name: _____
Title: _____

EXHIBIT A

EXTENSION AMENDMENT

[_____], 2020

Regions Bank, as Paying Agent (the "*Beneficiary*")
[1010 Gervais Street, 2nd Floor
Columbia, South Carolina 29201]

Attention: _____
Telephone: _____
Email: _____

Ladies and Gentlemen:

Reference is made to Irrevocable Transferable Direct-Pay Letter of Credit No. LG/MIS/NY-085889 dated August 25, 2015 (the "*Letter of Credit*"), established by us in your favor as Beneficiary related to the Waterworks and Sewer System Revenue Bonds, Series 2009, issued by the City of Columbia, South Carolina (the "*Issuer*"). We notify you that, in accordance with the terms of the Letter of Credit and the Letter of Credit Reimbursement Agreement, dated as of August 26, 2015, between the Issuer and the Bank, the Stated Expiration Date (as defined in the Letter of Credit) has been extended to August 29, 2025.

This amendment must be attached to the Letter of Credit and is made a part thereof.

SUMITOMO MITSUI BANKING CORPORATION, acting
through its New York Branch

By: _____
Name: _____
Title: _____