
CITY OF COLUMBIA, SOUTH CAROLINA

(Sewer and Water Administration, Maintenance and Storage Facility Project)

ORDINANCE NO. : 2009-062

AN ORDINANCE AUTHORIZING THE DELIVERY OF A WATERWORKS AND SEWER SYSTEM REVENUE BOND (JUNIOR LIEN – SEWER AND WATER ADMINISTRATION, MAINTENANCE AND STORAGE FACILITY PROJECT), SERIES 2009, OF THE CITY OF COLUMBIA, SOUTH CAROLINA, FOR THE PURPOSE OF ACQUIRING CERTAIN REAL PROPERTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF THE BOND FROM THE NET REVENUES DERIVED FROM THE OPERATION OF THE CITY’S WATERWORKS AND SEWER SYSTEM; DELEGATING THE AUTHORITY TO THE MAYOR AND INTERIM CITY MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE BOND; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS, INCLUDING THE CONTRACT OF SALE; AND OTHER MATTERS RELATING THERETO.

Enacted: _____, 2009

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 (the "General Bond Ordinance") (except as herein otherwise expressly provided or unless the context otherwise requires) shall for all purposes of this Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof.

"Bonds of 1993" shall mean the \$74,765,000 original principal amount Waterworks and Sewer System Revenue Bonds, Series 1993, dated May 1, 1993, and outstanding as of the date of this Ordinance in the principal amount of \$24,470,000.

"Bonds of 1999" shall mean the \$61,125,000 original principal amount Waterworks and Sewer System Revenue Bonds, Series 1999, dated October 1, 1999, and outstanding as of the date of this Ordinance in the principal amount of \$3,025,000.

"Bonds of 2001" shall mean the \$41,500,000 original principal amount Water and Sewer System Refunding Revenue Bonds, Series 2001, dated November 1, 2001, and outstanding as of the date of this Ordinance in the principal amount of \$37,550,000.

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

"Bonds of 2009" shall mean the Waterworks and Sewer System Revenue Bonds, Series 2009, in one or more sub-series, to be issued by the City in the estimated aggregate principal amount of \$105,000,000.

"City" shall mean City of Columbia, South Carolina.

"Contract of Sale" means the Contract of Sale between the City and the Owner to be dated as of the date of its delivery.

"Council" shall mean the City Council of City of Columbia, South Carolina.

"Fifth Supplemental Ordinance" shall mean Fifth Supplemental Ordinance No. 2007-072 of the Council of the City enacted on September 19, 2007, as amended and supplemented from time to time.

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

"Fiscal Year" shall mean the fiscal year for the System as determined by the Council, initially being the period from July 1 in any year to and including June 30 in the following year.

“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.

“Junior Bond” shall mean the Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars Waterworks and Sewer System Revenue Bond (Junior Lien- Sewer and Water Administration, Maintenance and Storage Facility Project), Series 2009, authorized by this Ordinance.

“Owner” means SRE South Carolina-4, LLC.

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

“Senior Lien Bonds” shall mean, collectively, the Bonds of 1993, the Bonds of 1999, the Bonds of 2001, the Bonds of 2005 and the Bonds of 2009.

“Sixth Supplemental Ordinance” shall mean the Sixth Supplemental Ordinance of the Council of the City to be enacted which will authorize the issuance and sale of the Bonds of 2009.

“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 Ordinance is enacted under the provisions of Section 3.5 of the General Bond Ordinance, which permits the City to issue Junior Bonds, payable from and secured by a pledge of Net Revenues (as such terms are defined in the General Bond Ordinance).

(b) The Junior Bond constitutes and is a "Junior Bond" within the meaning of the quoted word as defined and used in the General Bond Ordinance.

(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; (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; (v) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and to be created by the Fifth Supplemental Ordinance for the payment and security of the Bonds

of 2009; and (vi) any Series of Bonds issued pursuant to Section 3.3 or Section 3.4 of the General Bond Ordinance.

(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 Owner has agreed to sell and the City has agreed to purchase certain real property located at 4011 and 4013 Beltline Boulevard, in the City, at a purchase price of Nine Hundred Seventy-five Thousand and No/100 (\$975,000.00) Dollars, to be used by the City's water and sewer department for purposes which are necessary or incidental to the operation of the System (the "Sewer and Water Administration, Maintenance and Storage Facility Project"). In order to purchase the Sewer and Water Administration, Maintenance and Storage Facility Project the City has agreed to pay the Owner Nine Hundred Seventy-five Thousand and No/100 (\$975,000.00) Dollars, of which Three Hundred Seventy-five Thousand and No/100 (\$375,000.00) Dollars will be paid in cash at closing and Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars will be financed by the Owner by the purchase of the City's Junior Bond.

(f) Section 3.5 of the General Bond Ordinance provides that the City may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from the Net Revenues, provided that such Junior Bonds are issued to secure funds to defray the cost of improving, extending, enlarging, or repairing the System, some part thereof, including the acquisition of any system which may be combined with or consolidated into the System pursuant to law, and provided that the pledge of Net Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledge securing the Senior Lien Bonds and any Series of Bonds hereafter issued under the General Bond Ordinance.

(g) In compliance with the provisions of Section 3.5 of the General Bond Ordinance, the Council further finds and determines:

(i) The issuance of the Junior Bond is authorized under and pursuant to an ordinance which is not supplemental to the General Bond Ordinance as provided in the definition of "Junior Bonds" in Article I of the General Bond Ordinance.

(ii) The Junior Bond is being issued for the purpose of improving, extending, enlarging or repairing the System, i.e., acquiring the Sewer and Water Administration, Maintenance and Storage Facility Project.

(iii) A Debt Service Reserve Fund will not be established for the Junior Bond.

(k) It is necessary and in the best interest of the City to undertake the Sewer and Water Administration, Maintenance and Storage Facility Project and to issue the Junior Bond in the principal amount of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars in accordance with the Act, the General Bond Ordinance and this Ordinance, together with other available moneys of the City, for the purpose of acquiring the Sewer and Water Administration, Maintenance and Storage Facility Project. It is further necessary and in the best interest of the City to enter into the Contract of Sale.

Section 3. Authorization of the Sewer and Water Administration, Maintenance and Storage Facility

Project. There is hereby approved and authorized the undertaking of the Sewer and Water Administration, Maintenance and Storage Facility Project. Upon the purchase of the Sewer and Water Administration, Maintenance and Storage Facility Project pursuant to the Contract of Sale the Sewer and Water Administration, Maintenance and Storage Facility Project shall constitute and be operated as an integral part of the System. The period of usefulness of the System after the acquisition of the such project is determined to be not less than thirty (30) years from the date hereof.

Section 4.1. Authorization of the Junior Bond. Pursuant to the General Bond Ordinance, the Act and this Ordinance, there is hereby authorized to be issued a Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars waterworks and sewer system revenue bond of the City to be designated "Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars Waterworks and Sewer System Revenue Bond (Junior Lien - Sewer and Water Administration, Maintenance and Storage Facility Project), Series 2009, of City of Columbia, South Carolina" (the "Junior Bond").

The offer of the Owner to accept the Junior Bond to evidence payment by the City for the Sewer and Water Administration, Maintenance and Storage Facility Project is hereby accepted.

The Junior Bond shall be in fully registered form; shall be in the principal amount of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars; shall be dated the date of its delivery to the Owner; shall be registered in the name of "SRE South Carolina-4, LLC" or its registered assigns; shall be subject to redemption at the option of the City prior to maturity; shall bear no interest; and shall be payable in equal principal installments on August 15, 2009 and July 13, 2010, respectively, or such other principal amounts as the Mayor and Interim City Manager shall determine.

The Junior Bond shall be executed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk under the seal of the City to be affixed thereon.

Section 4.2. Form of the Junior Bond. The Junior Bond shall be in substantially the form set forth in Exhibit A hereof.

Section 4.3. Paying Agent and Registrar for the Junior Bond. The City shall act as Paying Agent and Registrar for the Junior Bond.

Section 5. Security For and Payment of the Junior Bond.

The Junior Bond 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 and this Ordinance. The Junior Bond shall be subject, so long as any of the Senior Lien Bonds or any Series of Bonds issued pursuant to the General Bond Ordinance are Outstanding, to a prior and paramount lien upon the pledge of the Net Revenues for the payment of the Senior Lien Bonds and any Series of Bonds hereafter issued pursuant to the General Bond Ordinance.

The Junior Bond 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. No recourse shall be had for the payment of the Junior Bond 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 the Junior Bond. 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 the Junior Bond and the Junior Bond shall never constitute an indebtedness of the City within the meaning of any State constitutional provisions (other than Article X, Section 14(10) of the State Constitution authorizing indebtedness payable solely from a source of revenues derived other than from a tax or license) or statutory limitation.

Section 6. Approval of Contract of Sale. The form, terms and provisions of the Contract of Sale presented to a meeting of Council at which this Ordinance was enacted and filed with the Clerk to Council be and hereby are approved and all terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Contract of Sale were set out in this Ordinance in its entirety. The Interim City Manager be and is hereby authorized, empowered and directed to execute, acknowledge and deliver the Contract of Sale in the name and on behalf of the City, and thereupon to cause the Contract of Sale to be delivered to the Owner. The Contract of Sale is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Interim City Manager (with the advice of the City's Attorney), the Interim City Manager's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of the Contract of Sale now before this meeting. Any amendment to the Contract of Sale shall be executed in the same manner. The payment of a portion of the purchase price Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars of the Sewer and Water Administration, Maintenance and Storage Facility Project, as described in the Contract of Sale, from available Revenues of the System is hereby authorized and approved.

Section 7. Continuing Disclosure. The City covenants, so long as and to the extent required pursuant to Section 11-1-85, Code of Laws of South Carolina 1976, as amended, to file with a central repository for availability in the secondary bond market when requested:

- (a) an annual independent audit, within thirty days of the City's receipt of the audit; and,
- (b) event specific information within thirty (30) days of an event adversely affecting more than five percent (5%) of Revenues or the City's tax base.

The only remedy for failure by the City to comply with the covenant of this paragraph shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the General Bond Ordinance. The City specifically reserves the right to amend or delete this covenant to reflect any change in Section 11-1-85, without the consent of the Owner.

Section 8. Law and Place of Enforcement of this Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 9. Effect of Section and Section Headings and Table of Contents. The headings or titles of the several Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for

convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 10. 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.

Section 11. Further Actions. The Mayor, Interim City Manager, City Clerk, Finance Director and the City Attorney are hereby authorized and directed to execute such documents and instruments as necessary to effect the issuance of the Junior Bond, the execution and delivery of the Contract of Sale and to take any and all such further actions as shall be deemed necessary or desirable in order to carry out the intentions of this Ordinance.

Section 12. 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.

Section 13. Effective Date. This Ordinance shall become effective upon its enactment.

Enacted by the City Council of the City of Columbia, South Carolina, this ___ day of _____, 2009.

CITY COUNCIL OF THE CITY OF COLUMBIA,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

Clerk

Date of First Reading:

Date of Second Reading:

(FORM OF JUNIOR BOND)
UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
CITY OF COLUMBIA
WATERWORKS AND SEWER SYSTEM REVENUE BOND
(JUNIOR LIEN- SEWER AND WATER ADMINISTRATION, MAINTENANCE AND STORAGE
FACILITY PROJECT), SERIES 2009

\$650,000.00

The City of Columbia, South Carolina (the “City”), for value received, hereby promises to pay to SRE SOUTH CAROLINA-4, LLC (the “Owner”), or its registered assigns, but solely from the Net Revenues hereinafter mentioned, and not otherwise, the aggregate principal sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars. This Bond shall not bear any interest. This Bond shall mature on July 13, 2010, and be payable in equal principal installments of Three Hundred Twenty-five Thousand and No/100 (\$325,000.00) Dollars on August 15, 2009 and July 13, 2010, respectively; provided, however, that the City shall be entitled to redeem this Bond, in whole or in part, at any time prior to such installment or maturity dates. Such payments shall fully discharge the obligations of the City to the extent of the payments so made.

This Bond is issued by the City for the purpose of acquiring the real parcels of property located at 4011 and 4013 Beltline Boulevard within the City (the “Project”).

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 17, CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, AND DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN STATE CONSTITUTIONAL PROVISIONS (OTHER THAN SECTION X, SECTION 14, PARAGRAPH 10 OF THE SOUTH CAROLINA CONSTITUTION AUTHORIZING OBLIGATIONS PAYABLE SOLELY FROM SPECIAL SOURCES NOT INVOLVING REVENUES FROM ANY TAX OR LICENSE) OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT AND TAXING POWERS OF THE CITY ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS BOND.

This Bond is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina, including particularly Article X, Section 14(10) of the South Carolina Constitution and Title 6, Chapter 17, of the Code of Laws of South Carolina, 1976, as amended (the “Act”). This Bond is issued under and pursuant to Ordinance No. 2009-062 of the City Council of the City (the “Council”) enacted on _____, 2009 (the “Bond Ordinance”), under the Act which Ordinance has been duly codified and indexed as prescribed by law.

This Bond constitutes a “Junior Bond” within the meaning of General Bond Ordinance No. 93-43 of the Council enacted on May 21, 1993, as amended and supplemented (as so amended and supplemented, the “General Bond Ordinance”), but this Bond is not being issued pursuant to a Supplemental Ordinance (as defined in the General Bond Ordinance). Although the Ordinance contains provisions or incorporates therein

provisions of the Bond Ordinance defining terms, describing the properties comprising the System and describing the revenues pledged for the payment of the principal of this Bonds, neither this Bond nor the Ordinance contain or incorporate by reference therein any covenants or provisions of the General Bond Ordinance or grant any rights or remedies available to holders of Bonds (as defined in the General Bond Ordinance) to the Owner, except as may be expressly undertaken thereby.

Reference is hereby made to the Ordinance to all the provisions of which any holder of this Bond by acceptance hereof thereby assents. The provisions of the Act and the Ordinance shall be a contract with the holder of this Bond.

This Bond is a special obligation of the City payable solely from, and secured equally and ratably by a pledge of and lien upon, the Net Revenues (as defined in the General Bond Ordinance) derived by the City from the System subordinate and inferior to the pledge thereof securing certain outstanding revenue bonds (defined in the Ordinance as the Senior Lien Bonds) of the City theretofore issued, and any Series of Bonds (as defined in the General Bond Ordinance) hereafter issued under the General Bond Ordinance payable from such Net Revenues on a parity and equally and ratably secured therewith.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of South Carolina to exist, to happen and to be performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the City of Columbia, South Carolina, has caused this Bond to be executed in its name by the manual/facsimile signature of the Mayor of the City and attested by the manual/facsimile signature of the Clerk of the City under the seal of the City impressed, imprinted or reproduced hereon.

CITY OF COLUMBIA, SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

Clerk

REGISTRATION

This Bond has been registered in the name of SRE SOUTH CAROLINA-4, LLC, on the registration books kept by the City Clerk of the City of Columbia, South Carolina.

Dated this ____ day of _____, 2009.

City Clerk, City of Columbia, South Carolina

ASSIGNMENT

For value received _____ hereby sells, assigns and transfers unto _____ the within mentioned Bond and hereby irrevocably constitutes and appoints _____, Attorney, to transfer the same on the books of registration in the office of the _____ of City of Columbia, South Carolina, with full power of substitution in the premises.

By _____

Dated: _____

Witness: _____

NOTE: The signature to this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.