

CITY OF COLUMBIA, SOUTH CAROLINA

ORDINANCE NO. 2005-105

AUTHORIZING THE EXECUTION AND DELIVERY OF A FORWARD DELIVERY OR SUPPLY AGREEMENT BY THE CITY OF COLUMBIA, SOUTH CAROLINA, IN CONNECTION WITH THE CITY'S OUTSTANDING WATERWORKS AND SEWER SYSTEM REVENUE BONDS; DELEGATING THE AUTHORITY TO THE MAYOR AND CITY MANAGER TO DETERMINE CERTAIN MATTERS; APPROVING THE FORM OF REQUEST FOR OFFERS; AND OTHER MATTERS RELATING THERETO.

Enacted: October 12, 2005

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BE IT ORDAINED BY THE CITY COUNCIL 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 portions of Lexington County and Richland County, South Carolina, and as such has all powers granted to municipalities by the Constitution and general laws of the State. Pursuant to Section 5-5-10 of the South Carolina Code of Laws 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.

(b) 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.

(c) In the exercise of the powers vested in it by the Constitution and statutes of the State of South Carolina, and proceeding in conformity with the provisions thereof, the City has heretofore acquired and constructed a waterworks system and a sewer system which the City has, by resolution adopted on August 26, 1949, combined into a single combined system, designated and known as the Waterworks and Sewer System of the City (the "System"). The System is and shall be operated on the same fiscal year basis as the City, which presently commences on July 1 of each year and ends on June 30 of the following year.

(d) Previously, the City Council enacted Ordinance No. 85-117 of the Council of the City on December 11, 1985, as amended and supplemented by Ordinance No. 91-23 (the "Bond Ordinance of 1985") of the Council of the City enacted on March 22, 1991, General Bond Ordinance No. 93-43 (the "General Bond Ordinance") which authorized and provided for the issuance of Waterworks and Sewer System Revenue Bonds. Pursuant to Supplemental Ordinances, the City has issued the following Waterworks and Sewer System Revenue Bonds:

(i) \$97,345,390.40 original principal amount Waterworks and Sewer System Revenue Bonds, Series 1991, April 17, 1991 (for the 1991 Capital Appreciation Bonds), outstanding in the principal amount of \$9,330,000 (the "Bonds of 1991").

(ii) \$74,765,000 original principal amount Waterworks and Sewer System Revenue Bonds, Series 1993, dated May 1, 1993, and outstanding as of the date hereof in the principal amount of \$44,950,000 (the "Bonds of 1993").

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(iii) \$61,125,000 original principal amount Waterworks and Sewer System Revenue Bonds, Series 1999, dated October 1, 1999, and outstanding as of the date hereof in the principal amount of \$13,730,000 (the "Bonds of 1999").

(iv) \$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 hereof in the principal amount of \$41,500,000 (the "Bonds of 2001").

(v) \$60,000,000 original principal amount Waterworks and Sewer System Revenue Bonds, Series 2005, dated June 15, 2005, and outstanding as of the date hereof in the principal amount of \$60,000,000.

The Bonds of 1991, the Bonds of 1993, Bonds of 1999, the Bonds of 2001 and the Bonds of 2005 are sometimes collectively referred to as the "Bonds".

(e) The 1985 Bond Ordinance and Section 6.1 of the General Bond Ordinance created and established certain debt service funds and interest accounts and principal accounts therein which are held by the City. Such funds and accounts shall be kept on deposit with the City, and withdrawals therefrom shall be made for the purposes provided in the 1985 Bond Ordinance and the General Bond Ordinance.

(f) The 1985 Bond Ordinance and the General Bond Ordinance, respectively, provide there shall be transferred from the Revenues of the System into the Debt Service Fund sufficient moneys so as to comply with the following provisions for the payment of the Bonds then outstanding. The City shall transfer Revenues of the System for deposit into the respective Debt Service Funds the amounts hereinafter set forth.

(i) There shall be established and maintained, for the purpose of paying the interest on the respective Series of Bonds as the same becomes due and payable, an Interest Account in the respective Debt Service Funds. Not later than the fifth (5<sup>th</sup>) day preceding an interest payment date (or if such fifth (5<sup>th</sup>) preceding day is not a business day, then on the next preceding business day), the City shall transfer for deposit into the respective Debt Service Funds for credit to the Interest Account an amount which will, together with any other funds on deposit from whatever source in the Interest Account of the respective Debt Service Fund, on such date be equal to the installment of interest then falling due on the respective Series of Bonds then Outstanding.

(ii) There shall be established and maintained, for the purpose of paying the principal of the Bonds as it becomes due, whether at maturity or by mandatory sinking fund redemption, a Principal Account in the respective Debt Service Funds. Not later than the fifth (5<sup>th</sup>) day preceding any principal payment date or mandatory sinking fund redemption date on any Bond (or if such fifth (5<sup>th</sup>) day is not a business day, then on the next preceding business day), the City shall transfer into the respective Debt Service Funds to the credit of the Principal Account an amount which will, together with any other funds on deposit from whatever source in the Principal Account of the Debt Service Fund, provide sufficient funds to pay the aggregate amount or mandatory sinking fund redemption date.

The moneys paid into the respective Debt Service Funds shall be held by the City in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and withdrawals from such Funds shall be made by the City in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent (The Bank of New York) not later than one (1) business day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

(g) The City Manager has advised the Council that, currently, funds of the System to be applied to the payment of the interest and principal of the outstanding Bonds are invested in short obligations which bear interest at lower rates than are available through the agreement authorized by this Ordinance. The City's financial advisor, Merchant Capital L.L.C., has advised the City of an investment vehicle commonly referred to as a Forward Delivery or Supply Agreement (the "Agreement"). Under such an Agreement, the City will agree to make monthly deposits to The Bank of New York Trust Company ("BONY"), acting as escrow agent or custodian, and BONY will invest such monthly deposits in obligations of the United States of America or agencies thereof ("U.S. Government Securities") supplied by a third party. The U.S. Government Securities will mature prior to or on the semi-annual interest and annual principal payment dates of the outstanding Bonds. The yield to be received by the City for the duration of the Agreement will be fixed to eliminate future reinvestment risk. The U.S. Government Securities purchased in advance by the City will mature at least two (2) business days prior to the required semi-annual interest and annual principal payment dates of the outstanding Bonds. Merchant Capital has advised the City that the advantage to the City of this type of investment is that the yield will be predetermined and the security for the investment will be U. S. Government Securities. By entering into the Agreement, the City will be able to fix its rate of return on the monthly deposits through the term of the Bonds of 2001 (2019). Such an Agreement will be advantageous and economical to the City and the System.

(h) It is in the best interest of the City to authorize the Mayor of the City and the City Manager with the assistance of Merchant Capital to seek proposals from various providers to enter into the Agreement authorized hereby upon such terms and conditions as the Mayor and the City Manager may agree upon with the provider under the Agreement.

Section 2. Delegation of Authority. Without further authorization, the City hereby delegates to the Mayor of the City and City Manager the authority to seek and accept proposals from various providers (as Merchant Capital advises the City) for the Agreement. The form, terms and provisions of the Agreement shall be approved by the Mayor and City Manager of the City. The Mayor of the City is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Manager is hereby authorized, empowered and directed to attest, the Agreement in the name and on behalf of the City, and thereupon to cause the Agreement to be delivered to the other party or parties thereto. The execution of the Agreement shall constitute conclusive evidence of approval of such Agreement.

Section 3. Approval of Form of Request for Offers. The form of the Request for Offers, a copy of which has been presented to Council and filed with minutes of the meeting at

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which this Ordinance was enacted, is hereby approved with such changes in the form, terms and provisions thereof as the Mayor or City Manager, or either one of them acting alone, with the advise of Merchant Capital, shall approve.

Section 4. Further Actions. The Mayor, City Manager, Finance Director and 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 execution and delivery of the Agreement and to carry out the intentions of this Ordinance. The Council authorizes the City Manager to employ Merchant Capital as financial advisor and retain McNair Law Firm, P.A., as special counsel in connection with the transaction authorized by this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective upon its enactment.

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Enacted by the City Council of the City of Columbia, South Carolina, this 12th day of October, 2005.

CITY COUNCIL OF THE CITY OF COLUMBIA,  
SOUTH CAROLINA

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

Mayor

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(SEAL)

ATTEST:

*Walter D. Solley*  
Clerk

Date of First Reading:      October 5, 2005  
Date of Second Reading:    October 12, 2005

*Jim*  
As to Form

[Signature Page]