

RESOLUTION NO. 018, SERIES 2019

A RESOLUTION OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE APPOINTMENT OF PNC CAPITAL MARKETS LLC AS A CO-REMARKETING AGENT FOR THE \$128,000,000 OUTSTANDING PRINCIPAL AMOUNT OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, POLLUTION CONTROL REVENUE BONDS, 2003 SERIES A (LOUISVILLE GAS AND ELECTRIC COMPANY PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF A LETTER AGREEMENT IN CONNECTION WITH THE REMARKETING OF THE \$40,000,000 OUTSTANDING PRINCIPAL AMOUNT OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, POLLUTION CONTROL REVENUE BONDS, 2005 SERIES A (LOUISVILLE GAS AND ELECTRIC COMPANY PROJECT); AND TAKING OTHER ACTIONS RELATED TO THE REMARKETING OF THE ABOVE-IDENTIFIED BONDS

SPONSORED BY: COUNCIL MEMBER YATES

**WHEREAS**, on November 20, 2003, Louisville/Jefferson County Metro Government ("**Metro Government**") issued its Pollution Control Revenue Bonds, 2003 Series A (Louisville Gas and Electric Company Project) in an aggregate principal amount of \$128,000,000 (the "**2003 Series A Bonds**") pursuant to Ordinance No. 190, Series 2003 adopted by the Legislative Council of the Louisville/Jefferson County Metro Government (the "**Council**") on October 23, 2003 and pursuant to an Indenture of Trust dated as of October 1, 2003 (the "**Original Series 2003A Indenture**"), by and between Metro Government and U.S. Bank National Association, as successor trustee thereunder (the "**Trustee**"), as amended and supplemented pursuant to a Supplemental Indenture No. 1 to Indenture of Trust dated as of September 1, 2010 by and between Metro Government and the Trustee (the "**Series 2003A Supplemental Indenture**" and, together with the Original Series 2003A Indenture, the "**Series 2003A Indenture**"); and

**WHEREAS**, Metro Government loaned the proceeds of the 2003 Series A Bonds to Louisville Gas and Electric Company (the "**Company**") pursuant to a Loan Agreement dated as of October 1, 2003 by and between Metro Government and the Company (the "**Original 2003A Loan Agreement**"), as amended and supplemented pursuant to an Amendment No. 1 to Loan

Agreement dated as of September 1, 2010, by and between Metro Government and the Company (the “**Series 2003A Supplemental Loan Agreement**” and, together with the Original Series 2003A Loan Agreement, the “**Series 2003A Loan Agreement**”); and

**WHEREAS**, Morgan Stanley & Co. LLC (“**Morgan Stanley**”) currently serves as the sole Remarketing Agent of the 2003 Series A Bonds pursuant to the Series 2003A Indenture; and

**WHEREAS**, the 2003 Series A Bonds currently bear interest at a Long Term Rate in a Long Term Rate Period that expires on March 31, 2019; and

**WHEREAS**, owners must tender their 2003 Series A Bonds on April 1, 2019 so that Morgan Stanley may remarket the 2003 Series A Bonds to investors in a new Long Term Rate Period beginning on and including April 1, 2019; and

**WHEREAS**, pursuant to Section 11.01(a) of the Series 2003A Indenture, the Company desires to direct Metro Government to appoint PNC Capital Markets LLC (“**PNC**” and, together with Morgan Stanley, the “**Series 2003A Remarketing Agents**”) as a co-Remarketing Agent for the limited purpose of offering the 2003 Series A Bonds for sale to investors in connection with the April 1, 2019 remarketing, and for Morgan Stanley to serve as the sole Remarketing Agent of the 2003 Series A Bonds thereafter; and

**WHEREAS**, on April 13, 2005, Metro Government issued its Pollution Control Revenue Bonds, 2005 Series A (Louisville Gas and Electric Company Project) in an aggregate principal amount of \$40,000,000 (the “**2005 Series A Bonds**”) pursuant to Ordinance No. 36, Series 2005 adopted by the Council on March 10, 2005 and pursuant to an Indenture of Trust dated as of February 1, 2005 (the “**Original Series 2005A Indenture**”), by and between Metro Government and U.S. Bank National Association, as successor trustee thereunder, as amended and restated pursuant to an Amended and Restated Indenture of Trust dated as of September 1, 2008 by and between Metro Government and the Trustee (the “**Series 2005A Amended and Restated Indenture**”), as amended and supplemented pursuant to a Supplemental Indenture No. 1 to Amended and Restated Indenture of Trust dated as of

September 1, 2010 by and between Metro Government and the Trustee (the “**Series 2005A Supplemental Indenture**” and, together with the Original Series 2005A Indenture and the Series 2005A Amended and Restated Indenture, the “**Series 2005A Indenture**”); and

**WHEREAS**, Metro Government loaned the proceeds of the 2005 Series A Bonds to the Company pursuant to a Loan Agreement dated as of February 1, 2005 by and between Metro Government and the Company (the “**Original 2005A Loan Agreement**”), as amended and restated pursuant to an Amended and Restated Loan Agreement dated as of September 1, 2008 by and between Metro Government and the Company (the “**Series 2005A Amended and Restated Loan Agreement**”), as amended and supplemented pursuant to an Amendment No. 1 to Amended and Restated Loan Agreement dated as of September 1, 2010 by and between Metro Government and the Company (the “**Series 2005A Supplemental Loan Agreement**” and, together with the Original Series 2005A Loan Agreement and the Series 2005A Amended and Restated Loan Agreement, the “**Series 2005A Loan Agreement**”); and

**WHEREAS**, Goldman, Sachs & Co. (the “**Series 2005A Remarketing Agent**”) currently serves as the Remarketing Agent of the 2005 Series A Bonds pursuant to the Series 2005A Indenture; and

**WHEREAS**, the 2005 Series A Bonds currently bear interest at a Fixed Rate in a Fixed Rate Period that expires on July 31, 2019 and will be remarketed by the Series 2005A Remarketing Agent in a new Fixed Period beginning on and including August 1, 2019; and

**WHEREAS**, the Series 2005A Indenture and the Series 2005A Loan Agreement authorize the Company to cause the 2005 Series A Bonds to be optionally redeemed before final maturity under certain circumstances; and

**WHEREAS**, the Series 2005A Remarketing Agent has advised the Company that waiving certain of its rights to cause the 2005 Series A Bonds to be optionally redeemed during their new Fixed Rate Period would assist in an effective remarketing of the 2005 Series A Bonds by the Series 2005A Remarketing Agent; and

**WHEREAS**, the Company further desires to enter into a letter agreement with Metro Government for the 2005 Series A Bonds (the “**Letter Agreement**”) whereby the Company will agree not to exercise the Company’s rights under the Series 2005A Loan Agreement to cause the 2005 Series A Bonds to be optionally redeemed under the circumstances specified therein during the Fixed Rate Period for the 2005 Series A Bonds beginning on and including August 1, 2019; and

**WHEREAS**, the Company further reserves the right to request Metro Government to execute a Department of the Treasury, Internal Revenue Service Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues (“**Form 8038**”) in connection with the remarketing of the 2003 Series A Bonds or the 2005 Series A Bonds if the Company in its sole discretion determines that it is appropriate to file a Form 8038 with the Internal Revenue Service to protect the tax-exempt status of the interest of the 2003 Series A Bonds or the 2005 Series A Bonds;

**NOW THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:**

**Section 1.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Resolution, which are incorporated in this Section 1 by reference, are true and correct.

**Section 2.** Metro Government, acting by and through the Council as its duly authorized legislative body, determines, resolves, and orders that PNC is hereby appointed as a co-Remarketing Agent of the 2003 Series A Bonds for the limited purpose of offering the 2003 Series A Bonds for sale to investors in connection with the April 1, 2019 remarketing, and for Morgan Stanley to serve as the sole Remarketing Agent of the 2003 Series A Bonds thereafter.

**Section 3.** Metro Government, acting by and through the Council as its duly authorized legislative body, hereby determines, resolves, and orders that the Mayor and the

Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of Metro Government:

(a) Letter Agreement by and between Metro Government and the Company whereby the Company will agree not to exercise its rights under the Series 2005A Loan Agreement to cause the 2005 Series A Bonds to be optionally redeemed under the circumstances specified in the Letter Agreement during the Fixed Rate Period beginning on and including August 1, 2019;

(b) A Form 8038 in connection with the remarketing of the 2003 Series A Bonds or the 2005 Series A Bonds if the Company in its sole discretion determines that it is appropriate to file a Form 8038 with the Internal Revenue Service to protect the tax-exempt status of the interest on the 2003 Series A Bonds or the 2005 Series A Bonds; and

(c) All such further letters, agreements, documents, instruments, forms, and certificates as shall be necessary and appropriate to consummate the remarketing of the 2003 Series A Bonds and the 2005 Series A Bonds as described herein.

**Section 4.** The singular form of any word used herein shall include the plural, and vice versa. The use herein of a word of any gender shall include correlative words of all genders. Unless otherwise specified, the word "including" shall mean "including without limitation", the word "or" shall mean "and/or", and the word "any" shall mean "any and all."

**Section 5.** This Resolution shall take effect upon its passage and approval.

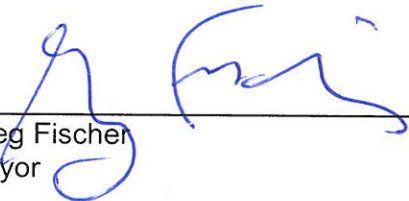
[Signature page to follow]

**INTRODUCED, SECONDED, AND GIVEN FIRST READING** at a duly convened regular meeting of the Legislative Council of the Louisville/Jefferson County Metro Government held on February 7, 2019.

**GIVEN SECOND READING AND ENACTED** at a duly convened regular meeting of the Legislative Council of the Louisville/Jefferson County Metro Government held on \_\_\_\_\_, 2019, signed by the Mayor as evidence of his approval, filed, and indexed as provided by law.

  
\_\_\_\_\_  
Stephen Ott  
Metro Council Clerk

 PRO - TEM  
\_\_\_\_\_  
David James  
President of the Council

  
\_\_\_\_\_  
Greg Fischer  
Mayor

2-25-2019  
\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

By:   
\_\_\_\_\_  
Assistant Jefferson County Attorney



Louisville/Jefferson County Metro Government  
Louisville, Kentucky 40202

**Letter Agreement with respect to the remarketing of the \$40,000,000  
Louisville/Jefferson County Metro Government, Kentucky, Pollution  
Control Revenue Bonds, 2005 Series A (Louisville Gas and Electric  
Company Project)**

This Letter Agreement, dated as of August 1, 2019, is entered into by Louisville/Jefferson County Metro Government (the “**Issuer**”) and Louisville Gas and Electric Company (the “**Company**”) in connection with the remarketing of the above-captioned bonds (the “**Bonds**”).

The Bonds were issued by the Issuer pursuant to an Indenture of Trust, dated as February 1, 2005, as amended and restated pursuant to an Amended and Restated Indenture of Trust dated as of September 1, 2008, and as amended by Supplemental Indenture No. 1 to Amended and Restated Indenture of Trust dated as of September 1, 2010 (collectively, the “**Indenture**”), between the Issuer and U.S. Bank National Association, as successor Trustee, Bond Registrar, Paying Agent, and Tender Agent (the “**Trustee**”). The Issuer loaned the proceeds of the Bonds to the Company (the “**Loan**”) pursuant to a Loan Agreement dated as of February 1, 2005, as amended and restated pursuant to an Amended and Restated Loan Agreement dated as of September 1, 2008, and as amended by Amendment No. 1 to Amended and Restated Loan Agreement dated as of September 1, 2010, between the Issuer and the Company (collectively, the “**Loan Agreement**”). The Company is obligated to pay the principal of, premium if any, and interest on the Bonds pursuant to the Loan Agreement.

Unless otherwise defined in this Letter Agreement, any capitalized term used herein shall be defined as set forth in the Indenture.

Pursuant to Section 10.1 of the Loan Agreement, the Company has the option at its election to prepay the Loan in whole and to cancel and terminate the Loan Agreement, and cause the redemption of the Bonds, if certain events shall have occurred, including without limitation the events described in Sections 10.1(a) and 10.1(d) of the Loan Agreement, within 180 days preceding the giving of such written notice to the Trustee. Specifically, Sections 10.1(a) and 10.1(d) of the Loan Agreement provide that the Loan Agreement may be prepaid if the following events occur:

(a) If in the judgment of Company, unreasonable burdens or excessive liabilities shall have been imposed after the issuance of the 2005 Series A Bonds upon Company with respect to the Project or the operation thereof, including without limitation federal, state or other ad valorem, property, income or other taxes not imposed on the date of this [Loan] Agreement other than ad valorem taxes presently levied upon privately owned property used for the same general purpose as the Project; or

(d) In the event changes, which the Company cannot reasonably control, in the economic availability of materials,

supplies, labor, equipment, or other properties or things necessary for the efficient operation of either of the Mill Creek and Cane Run Generating Stations of the Company shall have occurred which, in the judgment of the Company, render the continued operation of either of the Mill Creek or Cane Run Generating Stations or any generating unit at either such station uneconomical; or changes in circumstances, after the issuance of the 2005 Series A Bonds including but not limited to changes in clean air or other air pollution control requirements, shall have occurred such that the Company shall determine that use of the Project is no longer required or desirable;

The Company hereby agrees to not exercise its option to prepay the Loan in whole, and cause the redemption of the Bonds, pursuant to Sections 10.1(a) and 10.1(d) of the Loan Agreement for the period or periods described below.

This Letter Agreement shall be effective for the period beginning on and including August 1, 2019 and ending on and including [ ] and shall automatically terminate thereafter; provided, however, the Company may unilaterally elect to extend the application of this Letter Agreement to additional successive periods, the first of which must begin on [ ] and the last of which must terminate on or before the final maturity date of the Bonds. The Company must make each such election by providing the Issuer and the Trustee written notice of the election at least two days before the date of the beginning of the new period. Each such notice shall describe the term of the new period and shall certify that the effectiveness of this Letter Agreement has been continuously maintained since August 1, 2019. No acknowledgement, consent, approval, or other action shall be required of the Issuer or the Trustee for each such election to be valid and effective. The Company shall provide notice of each such election to the Issuer and the Trustee in accordance with the notice provisions then reflected in the Indenture.

This Letter Agreement shall not be construed to amend, modify, supplement, or supersede any provision of the Loan Agreement, the Indenture, or the Bonds except to the limited extent set forth herein. This Letter Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Agreed to as of the date first above written.

[Signature Page To Follow]