

**A RESOLUTION**

**BY** *Demi Starnes*

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT OF THE SERIES 1985 WATER AND SEWER REVENUE BOND ESCROW AGREEMENT WITH THE BANK OF NEW YORK SO AS TO PROVIDE FOR ALTERNATIVE INVESTMENTS OF FUNDS HELD IN ESCROW; TO RECOGNIZE THAT THE U.S. DEPARTMENT OF THE TREASURY SUSPENDED THE OPPORTUNITY TO INVEST FUNDS HELD IN ESCROW IN STATE AND LOCAL GOVERNMENT SERIES; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta is responsible for the upkeep and development of public infrastructure within the corporate boundaries of Atlanta; and

**WHEREAS**, the financing of these capital improvements is primarily done through the issuance of General Obligation and Revenue Bonds; and

**WHEREAS**, it is sometimes economical to refinance outstanding higher interest debt with lower interest debt to realize savings in debt service payments; and

**WHEREAS**, in conjunction with these financings, escrow amounts must be established to provide for the payment of refunded debt upon maturity; and

**WHEREAS**, the Series 1985 Water and Sewer Bond Escrow Agreement specifies that funds held in escrow be invested in U.S. Treasury Securities – State and Local Government Series (“SLGS”); and

**WHEREAS**, on October 14, 2004, the U. S. Treasury Department suspended the opportunity to reinvest in SLGS, thus requiring the Escrow Agreement to be amended to allow for other investments; and

**WHEREAS**, Escrow Agent Bank of New York notified the Chief Financial Officer on October 27, 2004 that a reinvestment of \$5,269,000.00 needs to take place on or before November 15, 2004; and



**WHEREAS**, the Chief Financial Officer recommends to the City Council that the Mayor be authorized to enter into an Amended Escrow Agreement with Bank of New York to accomplish these alternative investments.

**THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES** that the Mayor be and is authorized to enter into an amendment to the Series 1985 Water and Sewer Revenue Bond Escrow Agreement with Bank of New York dated October 29, 1985, to provide for the purchase of other direct obligations of the United States Government when the Escrow Agent is unable to purchase "SLGS."

**THE COUNCIL FURTHER RESOLVES** that all Resolutions in conflict herewith are hereby rescinded.

A true copy,

*Rhonda Doughtin Johnson*  
Municipal Clerk, CMC

ADOPTED by the Council  
APPROVED by the Mayor

NOV 01, 2004  
NOV 05, 2004

MUN238/MWM/679803-c/5/102385

CITY OF ATLANTA, GEORGIA  
\$82,745,000 WATER AND SEWERAGE REVENUE BONDS, SERIES 1985  
ESCROW DEPOSIT AGREEMENT

THIS AGREEMENT executed on the 29<sup>th</sup> day of October, 1985, by and between the City of Atlanta, Georgia ("City"), and The Citizens and Southern National Bank, a commercial bank having full trust powers and a member of the Federal Deposit Insurance Corporation organized and existing under the laws of the United States and having its principal corporate trust office in the City of Atlanta, Georgia ("Bank").

W I T N E S S E T H:

ARTICLE I

Recitals

Section 1.1. This Agreement is entered into and is executed by the officials of the City pursuant to an ordinance adopted by the Council of the City (the "Council") on October 3, 1985 and approved by the Mayor on October 3, 1985 (the "Bond Ordinance").

Section 1.2. The City is now responsible for the payment of the obligations described in Schedule A hereto attached (the "Old Bonds"). The Old Bonds are payable as to principal at the Atlanta, Georgia, office of the Bank, as paying agent.

The Old Bonds will not be called for redemption prior to maturity. All principal of and interest on the Old Bonds are to be paid by the Bank when due from funds covered by this Agreement.

Section 1.3. The Council has adopted and the Mayor has approved the Bond Ordinance authorizing the issuance of \$82,745,000 Water and Sewerage Revenue Bonds, Series 1985, which are in the aggregate hereinafter called the "Refunding Bonds." A certified copy of the Bond Ordinance with all amendments to date has heretofore been delivered to the Bank by the City. The Refunding Bonds have been sold and it is contemplated that such bonds will be delivered to the purchaser thereof on or soon after the date hereof.

Section 1.4. A sufficient portion of the principal proceeds of the sale of the Refunding Bonds, together with other funds from legally available sources shall be invested as contemplated by the Bond Ordinance and as indicated in

10/29/2004 19:19 FAX

0003



Schedule B hereto attached and the securities in which such proceeds and funds are to be invested shall be held by the Bank in trust. The securities so held are required to bear such rates of interest and to have maturities which, together with any beginning cash balance, will assure the availability of the proceeds of the interest thereon and the principal thereof in time to pay promptly when due principal of and interest on the Old Bonds to the extent that provision is not made for the payment of the Old Bonds from other sources.

## ARTICLE II

### Deposit of Securities

Section 2.1. On or prior to the date of the delivery of the Refunding Bonds to the purchasers, the City will deposit certain funds (including proceeds of the Refunding Bonds) into an Escrow Account (the "Escrow Account") and the money therein shall be held by the Bank and invested in the securities and cash described in Schedule B hereto attached. Said securities comprise direct obligations of the United States of America.

Section 2.2. The Escrow Account shall contain two subaccounts: the "Restricted Subaccount" and the "Unrestricted Subaccount." The Bank shall reinvest all available uninvested balances (rounded down to an even \$100) in the Restricted Subaccount on deposit from time to time, whenever said balances exceed \$1,000, but only in zero-yield obligations issued directly by the Bureau of Public Debt of the United States Treasury (currently designated "United States Treasury Certificates of Indebtedness of the State and Local Government Series"). The Bank shall apply all uninvested money in the Unrestricted Subaccount to the payments next coming due from the Escrow Account before applying any money in the Restricted Subaccount.

Section 2.3. The Bank shall hold all balances not so invested or reinvested as hereinabove described and on deposit in the Escrow Account on demand and in trust for the purposes hereof and shall secure the same in accordance with applicable Georgia law for the securing of public funds.

Section 2.4. The Bank will take no action in the

investment or security of the Escrow Account in violation of this agreement and recognizes that such action might cause the Refunding Bonds to be classified as "arbitrage bonds" under Section 103(c) of the Internal Revenue Code of 1954, as amended, (the "Code") and regulations promulgated thereunder; provided, it shall be under no duty to affirmatively inquire whether the Government Securities as deposited are properly invested under said section; and, provided, further, it may rely on all specific directions in this Agreement in the investment or reinvestment of balances held hereunder.

Section 2.5. Said securities may be replaced by the City only when such replacement is declared, in a written opinion of counsel experienced in matters relating to Section 103(c) of the Code, to comply with the regulations thereunder, and then only when such securities are replaced by other direct obligations of the United States of America producing principal and interest in such amounts and at such times as will assure adequate funds to pay principal of and interest and redemption premium on the Old Bonds when due. Such replacement obligations shall not be subject to redemption at the option of the issuer.

### ARTICLE III

#### Holding and Disposition of Securities

Section 3.1. The Bank agrees that it will hold the money and securities so deposited in trust to secure and for the payment of principal of and interest on the Old Bonds and will collect principal of and interest on the securities so deposited in trust promptly as such principal and interest become due.

Section 3.2. No paying agents' fees for the payment of principal of or interest on the Old Bonds or other charges may be paid from the escrowed money or securities prior to retirement of all Old Bonds, and the City agrees that it will pay all such fees from its other legally available funds as such payments become due prior to such retirement to the extent not paid by the Bank from moneys specifically provided therefor.

Section 3.3. Whenever the collection of principal of or interest on or the liquidation of deposited securities shall result in cash in the Escrow Account in excess of that required for payments currently falling due, such excess shall be retained, invested in accordance with Section 2.2 hereof and applied to the making of payments next falling



due; provided that whenever the Bank shall have in the Escrow Account funds and investments in excess of those necessary to provide for the payment of all principal of and interest on all of the Old Bonds, such excess shall be released to the City.

Section 3.4. When all principal of the Old Bonds shall have become payable, the Bank shall retain in the Escrow Account such amount of money and securities as may be necessary for the payment of principal of and interest on any Old Bonds which may not have been presented for payment, and shall transfer the remainder of the money and securities in the Escrow Account to the City.

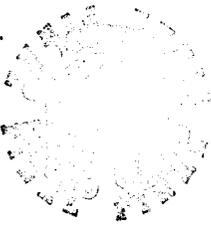
After the expiration of the period prescribed by the then applicable statute of limitations (as to which the Bank is authorized to rely on advice of counsel of its own choosing), if any money remains in the Escrow Account for the benefit of the holders of Old Bonds which shall not have been presented for payment, the Bank shall transfer all such remaining money and securities, if any, to the City or apply such money in such other manner as may then be required by law.

Section 3.5. The Atlanta, Georgia, office of the Bank is the paying agent for the Old Bonds and as such the Bank will assure, to the amount of the money and proceeds of the deposited securities collected and available as above provided, the prompt payment of interest on the Old Bonds when due and of principal of all of the Old Bonds whenever any such Old Bonds may be presented for payment when due.

#### ARTICLE IV

#### Irrevocability

The Bank and the City recognize that the holders from time to time of the Old Bonds have a beneficial and vested interest in the securities to be held by the Bank as herein provided and in the provisions of this Agreement. The Bank and the City further recognize that the Refunding Bonds will have been delivered to and accepted by the holders thereof in reliance upon the irrevocable character of this Agreement. It is, therefore, recited, understood and agreed that this Agreement shall not be subject to revocation or amendment until its provisions shall have been fully carried out except upon receipt by the Bank of an opinion of counsel experienced in municipal finance that such revocation or amendment will not materially adversely affect the rights of the holders of any such Old Bonds or

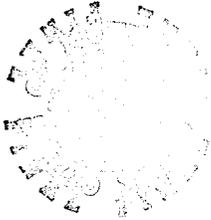


Refunding Bonds.

ARTICLE V

Fees and Costs

The Bank's initial fee and costs (including anticipated paying agents' fees) for and in carrying out the provisions of this Agreement have been fixed at \$55,000, which amount is to be paid at or prior to the time of the establishment of the Escrow Account and is not to be deducted therefrom.



ARTICLE VI

Possible Deficiencies

If at any time it shall appear to the Bank that the available proceeds of the securities in the Escrow Account will not be sufficient to make any payment due to the holders of any of the Old Bonds, the Bank shall notify the City not less than fifteen (15) days prior to such date and the City agrees that it will from any funds legally available for such purpose make up the anticipated deficit so that no default in the making of any such payment will occur.

ARTICLE VII

Reports

Beginning on January 1, 1986, and annually thereafter so long as any of the Old Bonds have not finally been paid, the Bank shall submit to the City, a report covering all money it shall have received and all payments it shall have made under the provisions of this Agreement during the preceding twelve months. Such report shall also list all securities on deposit with the Bank on the date of the report and all money held by it as proceeds of the collection of principal of and interest on the securities in the Escrow Account.

ARTICLE VIII

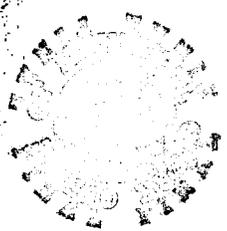
Character of Deposit

The Bank shall hold all securities deposited with it hereunder and all money received by it from the collection of principal of and interest on such securities and all money received from the City hereunder in a special fund and separate trust account wholly segregated from all other funds and securities deposited with the Bank, and shall never commingle such securities with other money or securities.

ARTICLE IX

Counterparts

This Agreement may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.



IN WITNESS WHEREOF, the City of Atlanta, Georgia, has caused this Agreement to be signed by its Mayor and by its Commissioner of Finance with the seal of the City to be hereto affixed, attested by the Clerk of Council, and Bank, has caused this Agreement to be signed in its corporate name by one of its Assistant Vice Presidents, and its corporate seal to be hereunto affixed, attested by its Corporate Trust Officer, all as of the day and year first above written.

CITY OF ATLANTA, GEORGIA

By [Signature]  
Mayor

By [Signature]  
Commissioner of Finance

[Affix City Seal Here]

Attest:

[Signature]  
Clerk of Council

THE CITIZENS AND SOUTHERN NATIONAL BANK

By [Signature]  
Vice President

[Affix Bank Seal Here]

Attest:

[Signature]  
Corporate Trust Officer

RCS# 6226  
11/01/04  
3:05 PM

Atlanta City Council

Regular Session

PERSONAL

ALTERNATIVE INVESTMENTS OF SERIES 1985  
WATER & SEWER REVENUE BONDS IN ESCROW  
ADOPT

YEAS: 11  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 3  
EXCUSED: 0  
ABSENT 2

Y Smith	NV Archibong	Y Moore	Y Mitchell
Y Starnes	B Fauver	B Martin	NV Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Sheperd	NV Borders

PERSONAL

**04-R-2039**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT OF THE SERIES 1985 WATER AND SEWER REVENUE BOND ESCROW AGREEMENT WITH THE BANK OF NEW YORK SO AS TO PROVIDE FOR ALTERNATIVE INVESTMENTS OF FUNDS HELD IN ESCROW; TO RECOGNIZE THAT THE U.S. DEPARTMENT OF THE TREASURY SUSPENDED THE OPPORTUNITY TO INVEST FUNDS HELD IN ESCROW IN STATE AND LOCAL GOVERNMENT SERIES; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.

BY *John Starns*

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT OF THE SERIES 1985 WATER AND SEWER REVENUE BOND ESCROW AGREEMENT WITH THE BANK OF NEW YORK SO AS TO PROVIDE FOR ALTERNATIVE INVESTMENTS OF FUNDS HELD IN ESCROW; TO RECOGNIZE THAT THE U.S. DEPARTMENT OF THE TREASURY SUSPENDED THE OPPORTUNITY TO INVEST FUNDS HELD IN ESCROW IN STATE AND LOCAL GOVERNMENT SERIES; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.

*Janice D. Davis, Chief Financial Officer*

*Adopted by Roll Call Vote*  
**ADOPTED**

NOV 01 2004

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 11/1/04

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading  
Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)  
Other

Members

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)  
Other

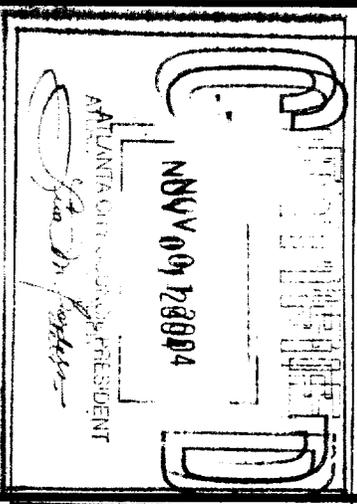
Members

Refer To

Refer To

- FINAL COUNCIL ACTION**
- 2nd
  - 1st & 2nd
  - 3rd
  - Consent
  - V Vote
  - RC Vote

**CERTIFIED**



MAYOR'S ACTION

*Mayor's Office*  
NOV 05 2004

OR