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08-R-0837

A RESOLUTION

BY: FINANCE/ EXECUTIVE COMMITTEE

NO. 08-R-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATLANTA AUTHORIZING THE MAYOR TO EXECUTE, DELIVER AND PERFORM, (1) A CONTRACT WITH THE CITY OF ATLANTA SOLID WASTE MANAGEMENT AUTHORITY ("SWMA") FOR THE ISSUANCE OF REFUNDING REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$22,500,000 TO REFUND BONDS PREVIOUSLY ISSUED BY SWMA WHICH FINANCED THE CLOSURE OF THE CASCADE ROAD LANDFILL, THE KEY ROAD LANDFILL, THE EAST CONFEDERATE AVENUE LANDFILL AND THE GUN CLUB ROAD LANDFILL; (2) A BOND PURCHASE AGREEMENT IN CONNECTION WITH SUCH BONDS; AND (3) A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE APPROVAL OF AN OFFICIAL STATEMENT; AND FOR OTHER PURPOSES**

**WHEREAS**, the Solid Waste Management Authority of the City of Atlanta ("SWMA") was activated by the City Council on September 20, 1993, and approved by the Mayor on September 20, 1993, pursuant to Ordinance 93-0-1484; and

**WHEREAS**, the purpose of SWMA is to facilitate the financing of the closure of landfills owned by the City of Atlanta (the "City"); and

**WHEREAS**, pursuant to a commitment dated October 2, 1994, between SWMA and a syndicate of banks, SWMA issued revenue bonds purchased by the banks and maturing on December 29, 1995 (the "Series 1994 Bonds") in order to provide funding for the closure of Contract No. FC-508-93 (the Gun Club Road Landfill) with Roy F. Weston, Inc. (the "Weston Contract"), authorized by Resolution No. 94-R-0634; and

**WHEREAS**, in connection with the issue of the 1994 Bonds, the City, pursuant to Ordinance 94-0-2116, authorized the execution and delivery of a contract dated as of December 1, 1994 with SWMA (the "1994 Contract") wherein the City committed to make payments sufficient to cover debt service on the Series 1994 Bonds; and

**WHEREAS**, in order to continue to provide funding for the Weston Contract, and to extend the term of the Series 1994 Bonds, SWMA issued revenue refunding bonds purchased by a syndicate of banks in the original aggregate principal amount of \$9,000,000 and maturing on December 31, 1996 (the "Series 1995 Bonds") pursuant to a Bond Resolution, adopted by SWMA on November 20, 1995 (the "1995 Bond Resolution"); and

**WHEREAS**, in connection with the issuance of the Series 1995 Bonds, the City, pursuant to Ordinance No. 95-0-1804, authorized the execution and delivery of a contract dated as of December 1, 1995 with SWMA (the "1995 Contract") wherein the City committed to make payments sufficient to cover debt service on the Series 1995 Bonds; and

**WHEREAS**, pursuant to a bond purchase agreement dated December 3, 1996, between SWMA and M.R. Beal & Company, as representative for the underwriters, SWMA issued revenue bonds (the "Series

1996 Bonds”) for the purpose of (i) refunding the Series 1995 Bonds and (ii) closing three additional landfills, designated Cascade Road Landfill, the Key Road Landfill and the East Confederate Avenue Landfill under a Closure Contract authorized by Ordinance No. 96-0-1537; and

**WHEREAS**, it is now necessary that SWMA issue Solid Waste Management Authority of the City of Atlanta Refunding Revenue Bonds, in an aggregate principal amount not to exceed \$22,500,000 (the “Series 2008 Bonds”) for the purpose of refunding the Series 1996 Bonds and paying the costs incidental to such issuance; and

**WHEREAS**, as security for the Series 2008 Bonds, it is necessary that the City execute a contract with SWMA (the “2008 Contract”), pursuant to which the City will commit to make payments to SWMA sufficient to cover debt service on the Series 2008 Bonds; and

**WHEREAS**, it is intended that the maturity of the Series 2008 Bonds will not exceed December 1, 2021 and that the interest rates will not exceed 6.00%; and

**WHEREAS**, the Series 2008 Bonds will be sold to the Underwriters (defined below) following the distribution of a preliminary official statement pursuant to the terms of a bond purchase agreement among M.R. Beal & Company and Banc of America Securities (collectively, the “Underwriters”), the City and SWMA (the “Bond Purchase Agreement”); and

**WHEREAS**, in order to comply with Rule 15c2-12 promulgated by the Securities and Exchange Act of 1934 (the “Rule”), the City will enter into a Continuing Disclosure Agreement, dated as of May 1, 2008 (the “Continuing Disclosure Agreement”), with Digital Assurance Certification, L.L.C., as dissemination agent; and

**WHEREAS**, SWMA has authorized the preparation of a Preliminary Official Statement and a final Official Statement setting forth the terms of the Series 2008 Bonds and the security therefor, including financial and other information about the City; and it is necessary for the City to compile and furnish information to SWMA and the Underwriters of the Series 2008 Bonds for such disclosure and for an appropriate official of the City to certify as to the accuracy of the information contained in the Preliminary Official Statement and the final Official Statement;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, AS FOLLOWS:**

**Section 1:** The Mayor is hereby authorized to enter into the 2008 Contract with the Solid Waste Management Authority of the City of Atlanta (“SWMA”) for the issuance of SWMA’s Refunding Revenue Bonds in the aggregate principal amount of not to exceed \$22,500,000 with a maturity not to exceed December 1, 2021 and interest rates not to exceed 6.00% to refund the Series 1996 Bonds and pay the costs of issuance associated therewith. The seal shall be affixed thereon, and the Clerk is authorized to attest to the 2008 Contract. A copy of the 2008 Contract is attached hereto as Exhibit “A” with such changes as the Mayor may deem appropriate. Upon issuance and delivery of the 2008 Bonds and the 2008 Contract, all prior contracts with the SWMA relating to prior bonds shall be deemed terminated.

**Section 2:** The Mayor is hereby authorized to execute the Bond Purchase Agreement on behalf of the City for the sale of the Series 2008 Bonds. The seal shall be affixed thereon, and the Clerk is authorized to attest to the Bond Purchase Agreement. A copy of the Bond Purchase Agreement is attached hereto as Exhibit “B” with such changes as the Mayor

may deem appropriate.

- Section 3:** The Mayor is hereby authorized to execute the Continuing Disclosure Agreement on behalf of the City. The seal shall be affixed thereon, and the Clerk is authorized to attest to the Continuing Disclosure Agreement. A copy of the Continuing Disclosure Agreement is attached hereto as Exhibit "C" with such changes as the Mayor may deem appropriate.
- Section 4:** The City and its staff are authorized and directed to assist SWMA and the Underwriters in the preparation of a Preliminary Official Statement, a form of which is attached hereto as Exhibit "D" and a final Official Statement (the "Official Statement"). The Mayor is authorized to execute the Official Statement on behalf of the City and to certify as to information about the City contained in the Preliminary Official Statement and the Official Statement, as required under applicable securities laws.
- Section 5:** The term of the Series 2008 Bonds shall be established following distribution of a Preliminary Official Statement and pricing of the Series 2008 Bonds by the Underwriters.
- Section 6:** The Mayor or, in her absence or incapacity, the Chief Financial Officer of the City are hereby authorized to acknowledge service on behalf of the City of the validation petition to be filed by the District Attorney of the Atlanta Judicial Circuit seeking the validation of the 2008 Bonds and to verify the allegations contained in the answer seeking validation of the Series 2008 Bonds.
- Section 7:** The Mayor, the Chief Financial Officer and other appropriate officers of the City are hereby requested to do any and all things to execute any and all of the documents required to be done and executed in connection with the issuance of the execution, delivery and performance of the 2008 Contract, the Continuing Disclosure Agreement, the Bond Purchase Agreement and any other documents, certificates or receipts necessary in connection therewith.
- Section 8:** The Mayor is hereby authorized to review and approve and to otherwise confirm that the final bond pricing terms, final maturity and other information relating to SWMA's 2008 Bonds are within the parameters set forth in this Resolution.
- Section 9:** The obligations of the City to make the payments provided under the 2008 Contract shall constitute a general obligation of the City and a pledge of the full faith and credit of the City to provide the funds required thereunder. The City is hereby authorized and shall levy on all property, including real property, within the City, subject to taxation for such purpose, an *ad valorem* tax unlimited as to rate or amount or otherwise in order to meet its payment obligations in connection with the 2008 Contract, provided that the City's duty to levy such tax shall abate to the extent that its revenues from other sources are used to make such payments provided for under applicable law.
- Section 10:** The provisions, terms and conditions of this Resolution shall constitute a contract by and between the City and the owners of the Series 2008 Bonds, and upon the execution of the 2008 Contract, this Resolution shall not be repealed or amended in any respect which will adversely affect the rights of the owners of the Series 2008 Bonds.
- Section 11:** All other ordinances and parts of ordinances that conflict with these herewith be and are

hereby repealed.

**Section 12:** This Resolution shall be in full force and effect immediately upon its adoption.

EXHIBIT "A"  
FORM OF CONTRACT

## CONTRACT

THIS CONTRACT, made and entered into as of the 1st day of May, 2008, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (the "City"), and the SOLID WASTE MANAGEMENT AUTHORITY OF THE CITY OF ATLANTA, a public body corporate and politic (the "Issuer").

### WITNESSETH:

WHEREAS, the Issuer was duly created and is validly existing pursuant to the Regional Solid Waste Management Authorities Act (O.C.G.A. Section 12-8-50 *et seq.*, as amended the "Act"); and

WHEREAS, under the Act, the Issuer has, among others, the power to (a) acquire, construct, improve, or modify, to place into operation, and to operate any "project" (as defined in the Act) and (b) issue revenue bonds for the purpose of paying, in whole or in part, the costs of any project; and

WHEREAS, under Article IX, Section II, Paragraph III(a)(2) of the Constitution of the State of Georgia, the City has the power to provide garbage and solid waste collection and disposal services, and under the Revenue Bond Law (O.C.G.A. Section 36-82-60 *et seq.*, as amended), the City has, among others, the power to provide facilities used or useful in connection with the collection, treatment, reuse or disposal of solid waste; and

WHEREAS, Article IX, Section III, Paragraph I(a) of the Georgia Constitution authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the Issuer and the City closed the Gun Club Road Landfill in accordance with the Closure Contract #FC-5508-93, with Roy F. Weston, Inc., a copy of which Contract is on file with the Secretary of the Issuer and the City Clerk; and

WHEREAS, the Issuer, in furtherance of the public purpose for which it was created, has previously issued its Revenue Bonds (Gun Club Road Landfill Project), Series 1994, in the aggregate principal amount of \$9,000,000 (the "1994 Bonds") to provide funds for the closure of the Gun Club Road Landfill Project; and

WHEREAS, in connection with the issuance and delivery of the 1994 Bonds, the City and the Issuer entered into a contract, dated as of December 1, 1994 (the "1994 Contract") pursuant to the terms of which the City agreed to pay the Issuer amounts sufficient to pay the debt service on the Series 1994 Bonds; and

WHEREAS, the Issuer issued Revenue Refunding Bonds (Gun Club Road Landfill Project), Series 1995 in aggregate principal amount of \$9,000,000 (the "1995 Bonds") and maturing on December 31, 1996 in order to refund the 1994 Bonds; and

WHEREAS, the 1995 Bonds were issued pursuant to the Act, the Revenue Bond Law and a resolution of the Issuer adopted on November 20, 1995 (the "1995 Resolution"); and

WHEREAS, the Issuer and the City then closed three additional City of Atlanta landfills, designated Key Road Landfill, Cascade Road Landfill and East Confederate Avenue Landfill (collectively, the "Three Closures"), under Closure Contract, authorized by Ordinance No. 96-0-1537; and

WHEREAS, the Issuer issued its Solid Waste Management Authority of the City of Atlanta Revenue Bonds (Landfill Closure Project), Series 1996, in the original aggregate principal amount of \$28,795,000 for the purpose of financing the cost of the Three Closures, refunding the 1995 Bonds and paying certain costs of issuance associated therewith (the "1996 Bonds"); and

WHEREAS, the 1996 Bonds were issued pursuant to the Act, the Revenue Bond Law and a Bond Resolution of the Issuer adopted December 3, 1996 (the "1996 Resolution");

WHEREAS, the Issuer now proposes to issue Solid Waste Management Authority of the City of Atlanta Refunding Revenue Bonds, in an aggregate principal amount not to exceed \$22,500,000 (the "2008 Bonds") for the purpose of refunding of the 1996 Bonds to achieve debt service savings; and

WHEREAS, the 2008 Bonds will be issued pursuant to the Act, the Revenue Bond Law and a Bond Resolution of the Issuer adopted April 17, 2008 (the "2008 Resolution");

WHEREAS, the Issuer and the City propose to enter into this Contract, pursuant to which the Issuer will agree to issue the 2008 Bonds, and the City will agree to pay to the Issuer amounts sufficient to pay the debt service on the 2008 Bonds; and

NOW, THEREFORE, for and in consideration of the premises and undertakings as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Issuer DO HEREBY AGREE, as follows:

1.

This Contract shall become effective upon the date of issuance and delivery of the 2008 Bonds and shall continue in effect until the principal, redemption premium (if any) and the interest on the 2008 Bonds shall have been fully paid or shall be deemed to have been fully paid pursuant to the provisions of the Resolution. In no event, shall the term of this Contract extend for more than fifty (50) years.

2.

The Issuer agrees as follows:

(a) For the purpose of paying the costs of refunding the 1996 Bonds and paying the costs of issuing the 2008 Bonds, the Issuer will issue the 2008 Bonds in the aggregate principal amount not exceeding \$22,500,000, at the interest rates, amounts and maturities as specified in Exhibit "A" hereto. The proceeds from the issuance and sale of the 2008 Bonds shall be applied in accordance with the 2008 Resolution.

(b) The Issuer shall issue the 2008 Bonds, at the request of the City, in order to refund the 1996 Bonds and pay the costs of issuance of the 2008 Bonds provided that the City executes this Contract or a contract similar to this Contract.

(c) Any money received by the Issuer to pay debt service on the 2008 Bonds shall be deposited into the Sinking Fund created in the 2008 Resolution,

(d) Except as provided in Section 4(a) hereof and Section 505 of the 2008 Resolution, the Issuer shall not issue any other obligations of any kind payable from the moneys received pursuant to this Contract, nor shall the Issuer create any lien whatsoever on such moneys.

3.

The City agrees as follows:

(a) The City shall pay to the Issuer moneys sufficient to provide for (i) the payment of the principal of, redemption premium (if any) and the interest on the 2008 Bonds as the same become due and payable and (ii) all other amounts owing under the 2008 Resolution, including but not limited to arbitrage rebate payments and the fees of the paying agent, registrar, custodians and depositories, less any money on hand in and deposited in the Sinking Fund as set forth in Section 4(c) hereof.

(b) The City shall, to the extent necessary, levy an annual tax on all taxable property located within the City, at such rate or rates as may be necessary to make the payments required by this Contract. Nothing herein shall be construed as limiting the right of the City to make the payments required by this Contract out of its general funds or from other moneys available to the City.

(c) The City's obligation to make the payments required by Section 3(a) of this Contract shall constitute a general obligation of the City for which its full faith and credit are pledged. The City's obligation to make the payments required by Section 3(a)(i) of this Contract shall be absolute and unconditional so long as the 2008 Bonds remain outstanding, and such payments shall not be abated or reduced for any reason whatsoever. Furthermore, the City shall not exercise any right of set-off or any similar right with respect to such payments, nor will it withhold any such payments because of any claimed breach of this Contract by the Issuer. The foregoing provision relating to the absolute and unconditional nature of said obligation to pay is incorporated herein for the benefit of the owners of the 2008 Bonds and shall not affect the obligation of the Issuer to perform its obligations under this Contract or otherwise, nor shall such provision otherwise affect any remedies available to the City on account of any claimed breach by the Issuer.

(d) The City agrees to perform all of its obligations under the 2008 Resolution.

4.

The Issuer and the City agree as follows:

(a) After the issuance of the 2008 Bonds, the Issuer may, from time to time and subject to the approval of the City, issue additional parity bonds payable as to principal and interest from the Sinking Fund and ranking as to the lien on the money, revenues and receipts of the Issuer (including payments made by the City pursuant to this Contract) on a parity basis with the 2008 Bonds, provided that such additional parity bonds are issued with the City's prior written consent and are issued in compliance with the requirements of Section 505 of the 2008 Resolution.

(b) This Contract shall constitute security for the 2008 Bonds. While nominally this Contract is between the City and the Issuer, it is acknowledged by the parties hereto that the owners of the 2008 Bonds and any additional parity bonds issued pursuant to 4(a) hereof have an interest herein, and the parties hereto understand, covenant and agree that this Contract shall not be modified or amended in any particular which would in any respect adversely affect the rights of any of such owners; provided, however, this Contract may be amended by enlarging the obligation of the City to make payments so as to permit the issuance of additional parity bonds issued pursuant to 4(a) hereof, but no such amendment may

decrease the payment required of the City hereunder with respect to the payment of the principal of and the interest on the 2008 Bonds.

(c) The payments required to be made pursuant to Section 3(a)(i) of this Contract shall be made directly to the Sinking Fund custodian set forth in the 2008 Resolution.

(d) Should any phrase, clause, sentence or paragraph herein contained be held invalid or unconstitutional, it shall in no way affect the remaining provisions of this Contract, which provisions shall remain in full force and effect.

(e) This Contract may be executed in several counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(f) This Contract shall be construed and enforced in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers, have cause this Contract to be executed in multiple counterparts under seals as of the day and year first above written.

Attest:

**CITY OF ATLANTA**

\_\_\_\_\_  
Clerk

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

Mayor

(SEAL)

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

Chief Financial Officer

Approved as to form

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

City Attorney

Attest:

**SOLID WASTE MANAGEMENT  
AUTHORITY OF THE CITY OF ATLANTA**

\_\_\_\_\_  
Secretary

(SEAL)

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

**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**