**09- R -2182**

**A RESOLUTION**
**BY CITY UTILITIES COMMITTEE**

**A RESOLUTION TO AUTHORIZE THE MAYOR TO ENTER INTO AGREEMENTS WITH THE GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY TO REFINANCE ON THE FINAL MATURITY DATES THE GEORGIA ENVIRONMENTAL FACILITY AUTHORITY'S LOANS TO THE CITY OF ATLANTA NUMBERED CWSRF 04-003, CWSRF 05-003 and CWSRF 06-003; AUTHORIZING THE MAYOR TO EXECUTE AN ELECTRONIC DEBIT TRANSACTION AUTHORIZATION TO FACILITATE REPAYMENT OF SAID LOAN AGREEMENTS; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") borrowed a total of ninety-three million dollars ($93,000,000.00) from the Clean Water State Revolving Fund ("CWSRF") administered by Georgia Environmental Facilities Authority ("GEFA"); and

**WHEREAS**, the City borrowed CWSRF funds in three loan agreements numbered CWSRF 04-003 (August 4, 2005), CWSRF 05-003 (October 26, 2006), and CWSRF 06-003 (December 17, 2007) as authorized by the Atlanta City Council in Resolutions 04-R-1402, 06-R-1376, and 07-R-1117; and

**WHEREAS**, each loan in its original amount totaled $31,000,000.00 and repayments were amortized over twenty (20) years; and

**WHEREAS**, it is in the best interests of the City to refinance on the final maturity date of said loan agreements in such manner that the full repayments are amortized over thirty (30) years and to avoid unnecessary balloon payments on the current final maturity dates of these loan agreements; and

**WHEREAS,** the cost of the refinancing is 1% of the balloon payments.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, that the Mayor is authorized to enter loan agreements ("Agreements") with GEFA for the purpose of refinancing the final maturity date of loan agreements CWSRF 04-003 (August 4, 2005), CWSRF 05-003 (October 26, 2005), and CWSRF 06-003 (December 17, 2007) that were entered between GEFA and the City.

**BE IT FURTHER RESOLVED**, that the Mayor is authorized to execute and deliver to GEFA certain loan agreements, in substantial form as the agreement attached as Exhibit "A", which shall pledge the full faith and credit of the City to repay the loans and which documents will be

approved as to form by the City Attorney and approved as to intent by the Chief Financial Officer.

**BE IT FURTHER RESOLVED**, that the Mayor is authorized to execute any and all other documents necessary to consummate and effectuate the loans and ACH debit transactions.

**BE IT FINALLY RESOLVED**, that that the Agreement will not become binding on the City and the City will incur no obligation nor liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to GEFA.

**«LENDER_NAME»**
(a public corporation duly created and
existing under the laws of
the State of Georgia)
as Lender

and

**«BORROWER_NAME»**
(a public body corporate and politic duly created and existing
under the laws of the State of Georgia)
as Borrower

# LOAN AGREEMENT

# LOAN AGREEMENT

This **LOAN AGREEMENT** (this **"Agreement"**) dated _____, by and between «Borrower_Name», a Georgia public body corporate and politic (the **"Borrower"**), whose address for purposes of this Agreement shall be «Borrower_Address», and «Lender_Name», a Georgia public corporation (the **"Lender"**), whose address for purposes of this Agreement shall be 2090 Equitable Building, 100 Peachtree Street, N.W., Atlanta, Georgia 30303.

1. **Background** - The Lender desires to loan to the Borrower «Loan_Amount» from the «Fund_Source» (the **"Fund"**) to refinance on the final maturity date the Lender's loan to the Borrower numbered Loan/Project No. _____ (the "Prior Loan"), which the Lender agreed to make to the Borrower pursuant to the Loan Agreement (the "Prior Loan Agreement"), dated _____, between the Lender and the Borrower and the repayment of which is evidenced by the Borrower's Promissory Note (the "Prior Note"), dated _____. The Borrower is using the Prior Loan to finance the costs of acquiring, constructing, and installing the environmental facilities described in Exhibit A attached hereto (the **"Project"**). The Environmental Protection Division (**"EPD"**) of the Department of Natural Resources of the State of Georgia has completed all existing statutory reviews and approvals with respect to the Project, as required by Section 50-23-9 of the Official Code of Georgia Annotated, and has approved or will approve the detailed plans and specifications (the **"Plans and Specifications"**) for the Project prepared or to be prepared by the Borrower's engineer (the **"Engineer"**), which may be amended from time to time by the Borrower but subject to the approval of the EPD.

2. **Loan** - Subject to the terms and conditions of this Agreement, the Lender agrees to make the following loan (the **"Loan"**) available to the Borrower:

(a) The Lender agrees to advance to the Borrower, on the final maturity date of the Prior Note, the Loan in a principal amount of up to «Loan_Amount», which Loan shall be disbursed in one advance, which shall eliminate the Lender's loan commitment hereunder, and any sums advanced hereunder may not be repaid and then re-borrowed.

(b) The Lender's commitment in paragraph (a) above to make an advance to the Borrower shall be a limited obligation of the Lender, to be funded solely from available moneys in the Fund and from no other source of funds, including other funds of the Lender.

(c) The Borrower's obligation to pay the Lender the principal of and interest on the Loan shall be evidenced by the records of the Lender and by the Note described below.

3. **Note** - The Loan shall be evidenced by the Promissory Note, dated this date, executed by the Borrower in favor of the Lender in an original stated principal amount equal to the maximum amount of the Loan as described above (the **"Note,"** which term shall include any extensions, renewals, modifications, or replacements thereof). The Note shall be in substantially the form attached to this Agreement as Exhibit B.

4. **Interest, Fees, and Other Charges** - In consideration of the Loan, the Borrower shall pay the Lender the following interest, fees, and other charges:

(a) The Loan shall bear interest at the rate or rates per annum specified in the Note and such interest shall be calculated in the manner specified in the Note.

(b) The Borrower agrees to pay all reasonable out-of-pocket costs and expenses of the Lender incurred in connection with its negotiation, structuring, documenting, and closing the Loan, including, without limitation, the reasonable fees and disbursements of counsel for the Lender. The Borrower agrees to pay all reasonable out-of-pocket costs and expenses of the Lender incurred in connection with its administration or modification of, or in connection with the preservation of its rights under, enforcement of, or any refinancing, renegotiation, restructuring, or termination of, any Credit Document (as hereinafter defined) or any instruments referred to therein or any amendment, waiver, or consent relating thereto, including, without limitation, the reasonable fees and disbursements of counsel for the Lender. Such additional loan payments shall be billed to the Borrower by the Lender from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Lender for one or more of the above items. Amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower.

5. **Prepayment** - The Loan shall be prepayable in accordance with the terms and conditions of the Note.

6. **Authorized Borrower Representative and Successors** - The Borrower shall designate a person to act on behalf of the Borrower under this Agreement (the **"Authorized Borrower Representative"**) by written certificate furnished to the Lender, containing the specimen signature of such person and signed on behalf of the Borrower by its chief executive officer. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates. In the event that any person so designated and his alternate or alternates, if any, should become unavailable or unable to take any action or make any certificate provided for or required in this Agreement, a successor shall be appointed in the same manner.

7. **Conditions to the Loan** - At the time of the making of the advance under the Loan by the Lender to the Borrower under this Agreement (the **"Advance"**), the following conditions shall have been fulfilled to the Lender's satisfaction:

(a) This Agreement and the Note shall have been duly executed and delivered by all required parties thereto and in form and substance satisfactory to the Lender, and the Lender shall have received (1) a certified copy of the resolution adopted by the Borrower's governing body, substantially in the form of Exhibit F attached hereto, and (2) a signed opinion of counsel to the Borrower, substantially in the form of Exhibit E attached hereto.

(b) There shall then exist no Event of Default under this Agreement (or other event that, with the giving of notice or passage of time, or both, would constitute such an Event of Default).

(c) All representations and warranties by the Borrower in this Agreement and the Note (collectively the **"Credit Documents"**) shall be true and correct in all material respects with the same effect as if such representations and warranties had been made on and as of the date of the Advance.

(d) Since the date of the most recent annual financial statements of the Borrower delivered to the Lender, there shall have been no material adverse change in the financial condition, assets, management, control, operations, or prospects of the Borrower.

(e) The Advance and the use of the proceeds thereof shall not violate any applicable law, regulation, injunction, or order of any government or court.

(f) The Lender shall have received (1) an Internal Revenue Service Form 8038-G relating to the Loan, executed by the Borrower and dated the date of the Advance, and (2) a Tax Certificate (the "Borrower's Tax Certificate"), substantially in the form of Exhibit C attached hereto, executed by the Borrower and dated the date of the Advance.

**8. Representations and Warranties** - The Borrower hereby represents and warrants to the Lender:

(a) Creation and Authority. The Borrower is a public body corporate and politic duly created and validly existing under the laws of the State of Georgia and has all requisite power and authority to execute and deliver the Credit Documents and to perform its obligations thereunder.

(b) Pending Litigation. Except as disclosed in writing to the Lender, there are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the Borrower, after making due inquiry with respect thereto, threatened against or affecting the Borrower in any court or by or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the properties, activities, prospects, profits, operations, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Credit Documents, or the transactions contemplated by the Credit Documents or which, in any way, would adversely affect the validity or enforceability of the Credit Documents or any agreement or instrument to which the Borrower is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the Borrower aware of any facts or circumstances presently existing that would form the basis for any such actions, suits, or proceedings. Except as disclosed in writing to the Lender, the Borrower is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, governmental authority, or arbitration board or tribunal.

(c) Credit Documents are Legal and Authorized. The execution and delivery by the Borrower of the Credit Documents, the consummation of the transactions therein contemplated, and the fulfillment of or the compliance with all of the provisions thereof (i) are within the power, legal right, and authority of the Borrower, (ii) are legal and will not conflict with or constitute on the part of the Borrower a violation of or a breach of or a default under, any organic document, indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Borrower is a party or by which the Borrower or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate official action on

the part of the governing body of the Borrower. The Credit Documents are the valid, legal, binding, and enforceable obligations of the Borrower. The officials of the Borrower executing the Credit Documents are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the Borrower.

(d) Governmental Consents. Neither the Borrower nor any of its activities or properties, nor any relationship between the Borrower and any other person, nor any circumstances in connection with the execution, delivery, and performance by the Borrower of its obligations under the Credit Documents, is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of the Borrower in connection with the execution, delivery, and performance of the Credit Documents or the consummation of any transaction therein contemplated, except as shall have been obtained or made and as are in full force and effect and except as are not presently obtainable. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower will be able to obtain all such additional consents, approvals, permissions, orders, licenses, or authorizations of governmental authorities as may be required on or prior to the date the Borrower is legally required to obtain the same.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default or that, with the lapse of time or with the giving of notice or both, would become an Event of Default. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower is not in default or violation in any material respect under any organic document or other agreement or instrument to which it is a party or by which it may be bound, except as disclosed in writing to the Lender.

(f) Compliance with Law. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower is not in violation of any laws, ordinances, or governmental rules or regulations to which it or its properties are subject and has not failed to obtain any licenses, permits, franchises, or other governmental authorizations (which are presently obtainable) necessary to the ownership of its properties or to the conduct of its affairs, which violation or failure to obtain might materially and adversely affect the properties, activities, prospects, profits, and condition (financial or otherwise) of the Borrower, and there have been no citations, notices, or orders of noncompliance issued to the Borrower under any such law, ordinance, rule, or regulation, except as disclosed in writing to the Lender.

(g) Restrictions on the Borrower. The Borrower is not a party to or bound by any contract, instrument, or agreement, or subject to any other restriction, that materially and adversely affects its activities, properties, assets, operations, or condition (financial or otherwise), except as disclosed in writing to the Lender. The Borrower is not a party to any contract or agreement that restricts the right or ability of the Borrower to incur indebtedness for borrowed money or to enter into loan agreements.

(h) Disclosure. The representations of the Borrower contained in this Agreement and any certificate, document, written statement, or other instrument furnished by or on behalf of the Borrower to the Lender in connection with the transactions contemplated hereby, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact that the Borrower has

not disclosed to the Lender in writing that materially and adversely affects or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the acquisition, construction, and installation of the Project or the properties, activities, prospects, operations, profits, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Credit Documents or any of the documents or transactions contemplated hereby or thereby or any other transactions contemplated by this Agreement, which has not been set forth in writing to the Lender or in the certificates, documents, and instruments furnished to the Lender by or on behalf of the Borrower prior to the date of execution of this Agreement in connection with the transactions contemplated hereby.

(i) Project Compliance. The Project complies or will comply with all presently applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the Project.

(j) Financial Statements. The financial statements of the Borrower that have been provided to the Lender in connection with the Loan present fairly the financial position of the Borrower as of the date thereof and the results of its operations and the cash flows of its proprietary fund types for the period covered thereby, all in conformity with generally accepted accounting principles (subject to normal year-end adjustments in the case of interim statements). Since the date of the most recent annual financial statements for the Borrower delivered to the Lender in connection with the Loan, there has been no material adverse change in the Borrower's financial condition, assets, management, control, operations, or prospects.

(k) Reaffirmation. The Borrower's acceptance of the Advance under the Loan shall constitute a representation and warranty by the Borrower to the Lender that the foregoing statements are true and correct on the date of the Advance and after giving effect to the Advance.

(l) Borrower's Tax Certificate. The representations and warranties of the Borrower set forth in the Borrower's Tax Certificate are hereby incorporated herein and made a part hereof by this reference thereto, as if fully set forth herein, and will be true and correct as of the date thereof.

**9. Security for Payments under Credit Documents** - (a) As security for the payments required to be made and the obligations required to be performed by the Borrower under the Credit Documents, the Borrower hereby pledges to the Lender its full faith and credit and revenue-raising power (including its taxing power) for such payment and performance. The Borrower covenants that, in order to make any payments required by the Credit Documents when due from its funds to the extent required hereunder, it will exercise its power of taxation and its power to set rates, fees, and charges to the extent necessary to pay the amounts required to be paid under the Credit Documents and will make available and use for such payments all rates, fees, charges, and taxes levied and collected for that purpose together with funds received from any other sources. The Borrower further covenants and agrees that in order to make funds available for such purpose in each fiscal year, it will, in its revenue, appropriation, and budgetary measures through which its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to satisfy any such payments that may be required to be made under the Credit Documents, whether or not any other sums are included in such measure,

until all payments so required to be made under the Credit Documents shall have been made in full. The obligation of the Borrower to make any such payments that may be required to be made from its funds shall constitute a general obligation of the Borrower and a pledge of the full faith and credit of the Borrower to provide the funds required to fulfill any such obligation. In the event for any reason any such provision or appropriation is not made as provided in this Section 9, then the fiscal officers of the Borrower are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations that may be due from the funds of the Borrower. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the Borrower had included the amount of the appropriation in its revenue, appropriation, and budgetary measures, and the fiscal officers of the Borrower shall make such payments required by the Credit Documents to the Lender if for any reason the payment of such obligations shall not otherwise have been made.

(b) The Borrower covenants and agrees that it shall, to the extent necessary, levy an annual ad valorem tax on all taxable property located within the territorial limits of the Borrower, as now existent and as the same may hereafter be extended, at such rate or rates, within any limitations that may be prescribed by law, as may be necessary to produce in each year revenues that will be sufficient to fulfill the Borrower's obligations under the Credit Documents, from which revenues the Borrower agrees to appropriate sums sufficient to pay in full when due all of the Borrower's obligations under the Credit Documents. Nothing herein contained, however, shall be construed as limiting the right of the Borrower to make the payments called for by the Credit Documents out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds or enterprise funds).

**10. Borrower Covenants** - The Borrower agrees to comply with the following covenants so long as this Agreement is in effect:

(a) Information. The Borrower shall deliver to the Lender, not less than 180 days after the end of each fiscal year, an electronic copy of the Borrower's annual financial statements prepared in accordance with generally accepted accounting principles and otherwise in form and substance satisfactory to the Lender, which financial statements shall be accompanied by (1) an audit report resulting from an audit conducted by a firm of independent certified public accountants in conformity with generally accepted auditing standards and (2) a certificate of the Borrower (A) to the effect that the Borrower is not in default under any provisions of the Credit Documents and has fully complied with all of the provisions thereof, or if the Borrower is in default or has failed to so comply, setting forth the nature of the default or failure to comply, and (B) stating the Fixed Charges Coverage Ratio, the Fixed Charges, and the Income Available for Fixed Charges of the Borrower for the fiscal year. The Borrower also shall promptly provide the Lender (1) upon receipt thereof, a copy of each other report submitted to the Borrower by its accountants in connection with any annual, interim, or special audit made by them of the books of the Borrower (including, without limitation, any management report prepared in connection with such accountants' annual audit of the Borrower) and (2) with such other information relating to the Borrower and the Project as the Lender may reasonably request from time to time.

(b) Access to Property and Records. The Borrower agrees that the Lender, the EPD, and their duly authorized representatives and agents shall have the right, upon reasonable prior

notice, to enter the Borrower's property at all reasonable times for the purpose of examining and inspecting the Project, including any construction or renovation thereof. The Borrower shall keep accurate and complete records and books of account with respect to its activities in which proper entries are made in accordance with generally accepted accounting principles reflecting all of its financial transactions. The Lender and the EPD shall also have the right at all reasonable times to examine and make extracts from the books and records of the Borrower, insofar as such books and records relate to the Project or insofar as necessary to ascertain compliance with this Agreement, and to discuss with the Borrower's officers, employees, accountants, and engineers the Project and the Borrower's activities, assets, liabilities, financial condition, results of operations, and financial prospects.

(c) Agreement to Acquire, Construct, and Install the Project. The Borrower covenants to cause the Project to be acquired, constructed, and installed without material deviation from the Plans and Specifications and warrants that the acquisition, construction, and installation of the Project without material deviation from the Plans and Specifications will result in facilities suitable for use by the Borrower and that all real and personal property provided for therein is necessary or appropriate in connection with the Project. The Borrower may make changes in or additions to the Plans and Specifications; provided, however, changes in or additions to the Plans and Specifications that are material shall be subject to the prior written approval of the Engineer and the EPD. The Borrower agrees to complete the acquisition, construction, and installation of the Project as promptly as practicable and with all reasonable dispatch after the date of this Agreement. Without limiting the foregoing sentence, the Borrower shall commence and complete each activity or event by the deadline stated in the Project Schedule included as part of Exhibit A attached hereto.

(d) Indemnity. (1) In addition to the other amounts payable by the Borrower under this Agreement (including, without limitation, Section 4 hereof), the Borrower hereby agrees to pay and indemnify the Lender from and against all claims, liabilities, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses) that the Lender may (other than as a result of the gross negligence or willful misconduct of the Lender) incur or be subjected to as a consequence, directly or indirectly, of (i) any actual or proposed use of any proceeds of the Loan or the Borrower's entering into or performing under any Credit Document, (ii) any breach by the Borrower of any representation, warranty, covenant, or condition in, or the occurrence of any other default under, any of the Credit Documents, including without limitation all reasonable attorneys' fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default, (iii) allegations of participation or interference by the Lender in the management, contractual relations, or other affairs of the Borrower, (iv) allegations that the Lender has joint liability with the Borrower to any third party as a result of the transactions contemplated by the Credit Documents, (v) any suit, investigation, or proceeding as to which the Lender is involved as a consequence, directly or indirectly, of its execution of any of the Credit Documents, the making of the Loan, or any other event or transaction contemplated by any of the Credit Documents, or (vi) the conduct or management of or any work or thing done on the Project and any condition of or operation of the Project.

(2) Nothing contained in this paragraph (d) shall require the Borrower to indemnify the Lender for any claim or liability that the Borrower was not given any opportunity to contest or for any settlement of any such action effected without the Borrower's consent. The

indemnity of the Lender contained in this paragraph (d) shall survive the termination of this Agreement.

(e) Fixed Charges Coverage Ratio. The Borrower shall not permit the Fixed Charges Coverage Ratio for any fiscal year to be less than 1.05. The following terms are defined terms for purposes of this Agreement:

**"Fixed Charges"** means, for any period, the sum of all cash outflows that the Borrower cannot avoid without violating the Borrower's long-term contractual obligations (those obligations that extend for a period greater than one year, determined in accordance with generally accepted accounting principles) and that are accounted for in the enterprise fund containing the Borrower's water or sewer operations, including, but not limited to, (i) interest on long-term debt, determined in accordance with generally accepted accounting principles, (ii) payments under long-term leases (whether capitalized or operating), and (iii) scheduled payments of principal on long-term debt.

**"Fixed Charges Coverage Ratio"** means, for any period, the ratio of Income Available for Fixed Charges to Fixed Charges.

**"Income Available For Fixed Charges"** means, for any period, net income of the enterprise fund containing the Borrower's water or sewer operations, plus amounts deducted in arriving at such net income for (i) interest on long-term debt (including the current portion thereof), (ii) depreciation, (iii) amortization, (iv) payments under long-term leases, and (v) transfers to other funds of the Borrower.

(f) Tax Covenants. The Borrower covenants that it will not take or omit to take any action nor permit any action to be taken or omitted that would cause the interest on the Note to become includable in the gross income of any owner thereof for federal income tax purposes. The Borrower further covenants and agrees that it shall comply with the representations and certifications it made in the Borrower's Tax Certificate and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

**11. Events of Default and Remedies** – (a) Each of the following events shall constitute an Event of Default under this Agreement:

(1) Failure by the Borrower to make any payment with respect to the Loan (whether principal, interest, fees, or other amounts) when and as the same becomes due and payable (whether at maturity, on demand, or otherwise); or

(2) The Borrower shall (A) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of the Borrower or of all or a substantial part of the property of the Borrower, (B) admit in writing the inability of the Borrower, or be generally unable, to pay the debts of the Borrower as such debts become due, (C) make a general assignment for the benefit of the creditors of the Borrower, (D) commence a voluntary case under the federal bankruptcy law (as now or hereafter in effect), (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (F) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Borrower in an

involuntary case under such federal bankruptcy law, or (G) take any action for the purpose of effecting any of the foregoing; or

(3) A proceeding or case shall be commenced, without the application of the Borrower, in any court of competent jurisdiction, seeking (A) the liquidation, reorganization, dissolution, winding-up, or composition or readjustment of debts of the Borrower, (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of the Borrower or of all or any substantial part of the assets of the Borrower, or (C) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition and adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment, or decree approving or ordering any of the foregoing shall be entered and continue in effect, for a period of sixty (60) days from commencement of such proceeding or case or the date of such order, judgment, or decree, or any order for relief against the Borrower shall be entered in an involuntary case or proceeding under the federal bankruptcy law; or

(4) Any representation or warranty made by the Borrower in any Credit Document shall be false or misleading in any material respect on the date as of which made (or deemed made); or

(5) Any default by the Borrower shall occur in the performance or observance of any term, condition, or provision contained in any Credit Document and not referred to in clauses (1) through (4) above, which default shall continue for thirty (30) days after the Lender gives the Borrower written notice thereof; or

(6) Any material provision of any Credit Document shall at any time for any reason cease to be valid and binding in accordance with its terms on the Borrower, or the validity or enforceability thereof shall be contested by the Borrower, or the Borrower shall terminate or repudiate (or attempt to terminate or repudiate) any Credit Document; or

(7) Default in the payment of principal of or interest on any other obligation of the Borrower for money borrowed (or any obligation under any conditional sale or other title retention agreement or any obligation secured by purchase money mortgage or deed to secure debt or any obligation under notes payable or drafts accepted representing extensions of credit or on any capitalized lease obligation), or default in the performance of any other agreement, term, or condition contained in any contract under which any such obligation is created, guaranteed, or secured if the effect of such default is to cause such obligation to become due prior to its stated maturity; provided that in each and every case noted above the aggregate then outstanding principal balance of the obligation involved (or all such obligations combined) must equal or exceed $100,000; or

(8) Default in the payment of principal of or interest on any obligation of the Borrower for money borrowed from the Lender (other than the Loan) or default in the performance of any other agreement, term, or condition contained in any contract under which any such obligation is created, guaranteed, or secured if the effect of such default is to entitle the Lender to then cause such obligation to become due prior to its stated maturity (the parties intend that a default may constitute an Event of Default under this paragraph (8) even if such default would not constitute an Event of Default under paragraph (7) immediately above); or

(9) The dissolution of the Borrower; or

(10) Any material adverse change in the Borrower's financial condition or means or ability to perform under the Credit Documents; or

(11) The occurrence of any other event as a result of which the Lender in good faith believes that the prospect of payment in full of the Loan is impaired; or

(12) The occurrence of an "Event of Default" under the Prior Loan Agreement (as defined in the Prior Loan Agreement).

(b) Upon the occurrence of an Event of Default, the Lender, at its option, without demand or notice of any kind, may declare the Loan immediately due and payable, whereupon all outstanding principal and accrued interest shall become immediately due and payable.

(c) Upon the occurrence of an Event of Default, the Lender, without notice or demand of any kind, may from time to time take whatever action at law or in equity or under the terms of the Credit Documents may appear necessary or desirable to collect the Loan and other amounts payable by the Borrower hereunder then due or thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under the Credit Documents.

(d) In the event of a failure of the Borrower to pay any amounts due to the Lender under the Credit Documents within 15 days of the due date thereof, the Lender shall perform its duty under Section 50-23-20 of the Official Code of Georgia Annotated to notify the director of the Office of Treasury and Fiscal Services of such failure, and the Lender may apply any funds allotted to the Borrower that are withheld pursuant to Section 50-23-20 of the Official Code of Georgia Annotated to the payment of the overdue amounts under the Credit Documents.

(e) Upon the occurrence of an Event of Default, the Lender may, in its discretion, by written notice to the Borrower, terminate its remaining commitment (if any) hereunder to make the Advance of the Loan, whereupon any such commitment shall terminate immediately.

**12. <u>Assignment or Sale by Lender</u>** - (a) The Credit Documents, and the obligation of the Borrower to make payments thereunder, may be sold, assigned, or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees, or subassignees by the Lender. Upon any sale, disposition, assignment, or reassignment, the Borrower shall be provided with a notice of such assignment. The Borrower shall keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended.

(b) The Borrower agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff, or counterclaim whatsoever that the Borrower may from time to time have against the Lender. The Borrower agrees to execute all documents, including notices of assignment, which may be reasonably requested by the Lender or its assignee to protect its interests in the Credit Documents.

(c) The Borrower hereby agrees that the Lender may sell or offer to sell the Credit Documents (i) through a certificate of participation program, whereby two or more interests are created in the Credit Documents or the payments thereunder or (ii) with other similar instruments, agreements, and obligations through a pool, trust, limited partnership, or other entity.

**13. Miscellaneous** - (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, exclusive of such state`s rules regarding choice of law.

(b) This Agreement shall be binding upon and shall inure to the benefit of the Borrower, the Lender, and their respective heirs, legal representatives, successors, and assigns, but the Borrower may not assign or transfer any of its rights or obligations hereunder without the express prior written consent of the Lender.

(c) This Agreement may not be waived or amended except by a writing signed by authorized officers of the Lender and the Borrower. (d) This Agreement shall be effective on the date on which the Borrower and the Lender have signed one or more counterparts of it and the Lender shall have received the same, provided the Lender receives the same executed by the Borrower by «Execution_Expiration». At such time as the Lender is no longer obligated under this Agreement to make any further advances under the Loan and all principal, interest, or other amounts owing with respect to the Loan and hereunder have been finally and irrevocably repaid by the Borrower to the Lender, this Agreement shall terminate.

(e) All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy, or other electronic means, addressed as provided at the beginning of this Agreement. Any party to this Agreement may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent. For purposes of this Section, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication that produces evidence of transmission.

(f) This Agreement may be executed in one or more counterparts.

(g) All pronouns used herein include all genders and all singular terms used herein include the plural (and vice versa).

(h) In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(i) Statements of Special Conditions in Exhibit D attached hereto shall govern the matters they address.

(j) This Agreement and the Note constitute the entire agreement between the Borrower and the Lender with respect to the Loan and supersede all prior agreements, negotiations, representations, or understandings between such parties with respect to such matters.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed and delivered by their respective officials hereunto duly authorized as of the date first above written.

RECOMMENDED:

_____

Commissioner, Department of Watershed Management

APPROVED:

_____

Chief Financial Officer

_____

Chief Operating Officer

**CITY OF ATLANTA**

By: _____

Name: Shirley Franklin
Title: Mayor

Attest:

_____

Name:
Title: Municipal Clerk

[Affix Seal Here]

APPROVED AS TO FORM:

_____

City Attorney

**Georgia Environmental Facilities Authority**

By: _____

Gregory R. mason
Interim Executive Director

[Affix Seal Here]

## DESCRIPTION OF THE PROJECT

## SCOPE OF WORK

Recipient: «Borrower_Name»

Loan Number: «Loan_No.»

## DESCRIPTION OF THE PROJECT

## PROJECT BUDGET

Recipient: «Borrower_Name»
Loan Number: «Loan_No.»

| ITEM | TOTAL | LOAN | SUBSIDY |
|---|---|---|---|
| Construction | | | |
| Contingency | | | |
| Engineering & Inspection | | | |
| Administrative/Legal | | | |
| Subtotal | | | |
| Loan Fee (2%) | | | |
| TOTAL | | | |

NOTE: Lender payments on invoices submitted as loan draw requests are based on the percentage of Project costs funded by the Lender.

## DESCRIPTION OF THE PROJECT

## PROJECT SCHEDULE

Recipient: «Borrower_Name»
Loan Number: «Loan_No.»

| ACTION | DATE |
|---|---|
| Complete Project Planning | |
| Initiated Design | |
| Plans and Specifications submitted to EPD | |
| Bid Opening | |
| Notice of Award | |
| Notice to Proceed with Construction | |
| Initiation of Construction | |
| Completion of Construction | |

**EXHIBIT B**

# FORM OF PROMISSORY NOTE

[Attached]

**EXHIBIT C**

# FORM OF TAX CERTIFICATE

[Attached]

## SPECIAL CONDITIONS

Recipient: «Borrower_Name»

Loan Number: «Loan_No.»

[1. ]

**EXHIBIT E**

## OPINION OF BORROWER'S COUNSEL

(Please furnish this form on Attorney's Letterhead)

«Lender_Name»
2090 Equitable Building
100 Peachtree Street, N.W.
Atlanta, Georgia 30303

Ladies and Gentlemen:

As counsel for «Borrower_Name» (the "Borrower"), I have examined duly executed originals of the Loan Agreement (the "Loan Agreement"), Loan/Project No. «Loan_No.», between the Borrower and «Lender_Name» (the "Lender"), the related Promissory Note (the "Note") of the Borrower, the proceedings taken by the Borrower to authorize the Loan Agreement and the Note (collectively, the "Credit Documents"), and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion, and based upon such examination, I am of the opinion, as of the date hereof, that:

1. The Borrower is a public body corporate and politic, duly created and validly existing under the laws of the State of Georgia.

2. The Credit Documents have been duly authorized, executed, and delivered by the Borrower and are legal, valid, and binding obligations of the Borrower, enforceable in accordance with their terms.

3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the Credit Documents.

4. To the best of my knowledge, the execution, delivery, and performance by the Borrower of the Credit Documents will not conflict with, breach, or violate any law, any order or judgment to which the Borrower is subject, or any contract to which the Borrower is a party.

With your permission, in rendering the opinions set forth herein, I have assumed the following, without any investigation or inquiry on my part:

(i) the due authorization, execution, and delivery of the Credit Documents by the Lender; and

(ii) that the Credit Documents constitute the binding obligations of the Lender and that the Lender has all requisite power and authority to perform its obligations thereunder.

The enforceability of the Credit Documents (i) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights, (ii) may be subject to general principles of equity, whether applied by a court of law or equity, and (iii) may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

**EXHIBIT F**

**EXTRACT OF MINUTES**
**RESOLUTION OF GOVERNING BODY**

Recipient: «Borrower_Name»
Loan Number: «Loan_No.»

At a duly called meeting of the governing body of the Borrower identified above (the "Borrower") held on the _____ day of _____, the following resolution was introduced and adopted.

**WHEREAS**, the governing body of the Borrower has determined to borrow not to exceed «Loan_Amount» from «Lender_Name» (the "Lender") to refinance a loan from the Lender to the Borrower to finance a portion of the costs of acquiring, constructing, and installing the environmental facilities described in Exhibit A to the hereinafter defined Loan Agreement (the "Project"), pursuant to the terms of a Loan Agreement (the "Loan Agreement") between the Borrower and the Lender, the form of which has been presented to this meeting; and

**WHEREAS**, the Borrower's obligation to repay the loan made pursuant to the Loan Agreement will be evidenced by a Promissory Note (the "Note") of the Borrower, the form of which has been presented to this meeting;

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Borrower that the forms, terms, and conditions and the execution, delivery, and performance of the Loan Agreement and the Note are hereby approved and authorized.

**BE IT FURTHER RESOLVED** by the governing body of the Borrower that the terms of the Loan Agreement and the Note (including the interest rate provisions, which shall be as provided in the Note) are in the best interests of the Borrower for the refinancing of the Project, and the governing body of the Borrower designates and authorizes the following persons to execute and deliver, and to attest, respectively, the Loan Agreement, the Note, and any related documents necessary to the consummation of the transactions contemplated by the Loan Agreement.

_____ _____
(Name of Person to Execute Documents) (Title)

_____ _____
(Name of Person to Attest Documents) (Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Dated:_____ _____
Secretary/Clerk

(SEAL)

**TRANSMITTAL FORM FOR LEGISLATION**

**TO: MAYOR'S OFFICE** **ATTN: GREG PRIDGEON**

**Dept.'s Legislative Liaison: LaShawn Gardiner**

**Contact Number: (404) 330-6449**

**Originating Department: Department of Finance**

**Committee(s) of Purview: City Utilities**

**Chief of Staff Deadline: 11/17/2009**

**Anticipated Committee Meeting Date(s): December 1-2, 2009**

**Anticipated Full Council Date: December 7, 2009**

**Legislative Counsel's Signature: Marc Goncher**

**Commissioner Signature:** _____

**Chief Procurement Officer Signature:** _____

**CAPTION**

A Resolution to authorize the Mayor to enter into agreements with the Georgia Environmental Facilities Authority to refinance on the final maturity dates the Georgia Environmental Facility Authority's loans to the City of Atlanta numbered CWSRF 04-003, CWSRF 05-003, CWSR 06-003; authorizing the Mayor to execute an electronic debit transaction authorization to facilitate repayment of said loan agreements; and for other purposes.

FINANCIAL IMPACT (if any):

Mayor's Staff Only

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Received by CPO: _____ (date) Received by LC from CPO: _____ (date)

Received by Mayor's Office: 11/30/09 (date) Reviewed by: _____ (date)

Submitted to Council: _____ (date)