

1 The Finance Committee offers its first substitute to file no. 2008-
2 538:

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4 Introduced by the Council President at the request of the Mayor and
5 Substituted by the Finance Committee:
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8 **ORDINANCE 2008-538**

9 AN ORDINANCE APPROVING, AND AUTHORIZING THE
10 MAYOR AND CORPORATION SECRETARY TO EXECUTE AND
11 DELIVER, FOR AND ON BEHALF OF THE CITY, THE
12 AMENDED AND RESTATED LANDFILL OPERATION AND
13 CONSTRUCTION AGREEMENT ("AGREEMENT") BETWEEN
14 THE CITY OF JACKSONVILLE AND TRAIL RIDGE
15 LANDFILL, INC. ("CONTRACTOR"), A SUBSIDIARY OF
16 WASTE MANAGEMENT, INC. OF FLORIDA; EXEMPTING
17 THE AGREEMENT FROM, OR WAIVING, THE PROVISIONS
18 OF PART 2 (SUPPLIES, CONTRACTUAL SERVICES AND
19 CAPITAL IMPROVEMENTS) AND PART 3 (PROFESSIONAL
20 SERVICES CONTRACTS) OF CHAPTER 126,
21 (PROCUREMENT CODE), ORDINANCE CODE, SO AS TO
22 ALLOW EXECUTION OF THE AGREEMENT WITHOUT THE
23 NECESSITY OF FOLLOWING CERTAIN OF THE
24 COMPETITIVE BIDDING AND/OR PROPOSAL PROCEDURES
25 OF THE PROCUREMENT CODE DUE TO (I) THE
26 COUNCIL'S APPROVAL OF THE AGREEMENT IN THIS
27 ORDINANCE, (II) CONTRACTOR'S KNOWLEDGE AND
28 EXPERIENCE IN THE OPERATION AND CONSTRUCTION OF
29 THE EXISTING LANDFILL FACILITY AND (III) THE
30 REQUIRMENT FOR THE CONTRACTOR OR CITY TO
31 COMPETITIVELY BID THE CONSTRUCTION OF THE NEW
32 LANDFILL FACILITY AT SUCH TIME AS THE
33 APPROPRIATE LANDFILL PERMITS ARE OBTAINED AND
34 THE PERMIT REQUIREMENTS AND SPECIFICATIONS ARE
35 KNOWN; WAIVING THE PROVISIONS OF SECTION
36 386.202(c), ORDINANCE CODE, REQUIRING THE
37 INCLUSION OF A SPECIFIC TERMINATION DATE IN THE
38 AGREEMENT, BECAUSE THE TERM OF THE AGREEMENT IS
39 BASED ON THE DELIVERY OF A CERTAIN NUMBER OF
40 TONS OF SOLID WASTE TO THE FACILTIY AND NOT ON
41 A SPECIFIC TIME PERIOD; PROVIDING AN EFFECTIVE
42 DATE.

43
44 **WHEREAS,** the City of Jacksonville ("City") owns the Trail
45 Ridge Landfill located at 5110 U.S. Highway 301 South in Baldwin,
46 Florida (the "Trail Ridge Landfill"), on City property consisting
47 of approximately 978 acres (the "Site"); and

1 **WHEREAS**, pursuant to Ordinance 89-1179 and Resolution 90-1006-
2 558, the City and Trail Ridge Landfill, Inc. a corporation and
3 subsidiary of Waste Management, Inc. of Florida ("Contractor"),
4 previously entered into the Landfill Operation Agreement (the
5 "Initial Operation Agreement") and the Landfill Design and
6 Construction Agreement (the "Initial Construction Agreement"), both
7 dated June 26, 1991, for the site acquisition, permitting, design,
8 construction and operation of the existing landfill facility by
9 Contractor, which facility is located on 144 acres at the southern
10 portion of the Site (the "Existing Landfill Facility"); and

11 **WHEREAS**, both the Initial Operation Agreement and the Initial
12 Construction Agreement have been modified by Resolution 91-1320-607
13 and numerous change orders; and

14 **WHEREAS**, the Existing Landfill Facility has a remaining
15 operational life under applicable permits of approximately seven
16 years, and the City has a long term continuing need for the Trail
17 Ridge Landfill beyond the operational life of the Existing Landfill
18 Facility; and

19 **WHEREAS**, the normal permitting process with the State of
20 Florida for a new landfill facility takes several or more years and
21 the City desires to begin the permitting process for the design,
22 construction and operation of a new landfill facility at the Site
23 as soon as possible; and

1 **WHEREAS**, the parties wish to enter into the Amended and
2 Restated Landfill Operation and Construction Agreement
3 ("Agreement"), in substantially the form **revised on file** with the
4 Legislative Services Division, labeled as "Revised on file, Amd &
5 Rstd Lndfill Op and Constr Agree, September 2, 2008 - Finance", for
6 the purpose of providing for the continued operation and eventual
7 closure of the Existing Landfill Facility, and also the permitting,
8 design, construction, operation and eventual closure of a new
9 landfill facility (the "New Landfill Facility") to be located north
10 of the Existing Landfill Facility at the Site, provided that the
11 construction contracts for the construction of the New Landfill
12 Facility will be competitively bid by City or Contractor in
13 accordance with the requirements and procedures in the City's
14 procurement code and the funds for such construction will be
15 appropriated in separate legislation after the permit requirements
16 and specifications for the New Landfill Facility are known; now
17 therefore,

18 **BE IT ORDAINED** by the Council of the City of Jacksonville:

19 **Section 1. Approval and Authorization to Execute and Deliver**
20 **the Agreement.** There is hereby approved, as required by Section
21 386.202 (Service Agreement) of Chapter 386 (Waste Flow Control),
22 *Ordinance Code*, and the Mayor and Corporation Secretary are hereby
23 authorized to execute and deliver, for and on behalf of the City,
24 the Agreement between the City and Contractor, in substantially the
25 form **revised on file** with the Legislative Services Division.

1 **Section 2. Purpose.** The purpose of this ordinance is to
2 provide for the continued operation and eventual closure of the
3 Existing Landfill Facility, and also to provide for the permitting,
4 design, construction, operation and eventual closure of the New
5 Landfill Facility in order to fulfill the City's long term
6 continuing need for the Trail Ridge Landfill beyond the remaining
7 operational life of the Existing Landfill Facility.

8 **Section 3. Exemption or Waiver of Agreement from**
9 **Competitive Bidding Requirements of Chapter 126, Ordinance Code.**

10 The execution and delivery of the Agreement by the City is exempt
11 from the competitive bidding requirements and procedures of Part 2
12 (Supplies, Contractual Services and Capital Improvements) and Part
13 3 (Professional Services Contracts) of Chapter 126, (Procurement
14 Code), *Ordinance Code*, or such requirements are hereby waived. The
15 basis of the exemption or waiver is Section 126.107(g), *Ordinance*
16 *Code*, which exempts from City procurement requirements supplies and
17 services specifically authorized within appropriating legislation.
18 Although this ordinance does not appropriate the funds for the
19 operation and construction of the New Landfill Facility, it
20 provides for such appropriation in future legislation after the
21 construction requirements are determined, and the construction
22 contracts will be competitively bid under the City's normal
23 procurement procedures. An additional reason for such waiver is
24 the Contractor's experience with the construction of the Existing
25 Landfill Facility and Contractor's long term operation of such
26 facility since the early 1990's.

27 **Section 4. Waiver of Certain Provisions of Section 386.202(c),**
28 **Ordinance Code.** Section 386.202(c), *Ordinance Code*, requires the
29 inclusion of a specific termination date for a landfill service
30 agreement like the Agreement. Such provision is hereby waived
31 because the term of the Agreement is based on the delivery of a
32 certain number of tons of solid waste to the Existing Landfill
33 Facility and the New Landfill Facility, as described in Section 4.2
34 of the Agreement, and the date that such tonnage amount will be
35 reached is unknown.

1 **Section 5. Appropriation for Funding of Agreement.** The
2 funding of the City's obligations to pay for construction costs for
3 the New Landfill Facility, including permitting and certain other
4 capital costs, will be appropriated in separate legislation after
5 the permit requirements and specifications for the New Landfill
6 Facility are known. The post-construction operational costs of the
7 New Landfill Facility and the continuing operational costs of the
8 Existing Landfill Facility will be appropriated in the City's
9 annual budget for solid waste disposal services as is customary.

10 **Section 6. Further Authorizations.** The Mayor, or his
11 designee, and the Corporation Secretary, are hereby authorized to
12 execute the Agreement and all other related contracts and documents
13 and otherwise take all necessary action in connection therewith and
14 herewith. The Director of Public Works, as contract administrator,
15 or his designee, is authorized to negotiate and execute all
16 necessary changes and amendments to the Agreement and other related
17 contracts and documents, to effectuate the purposes of this
18 Ordinance, without further Council action, provided such changes
19 and amendments are limited to "technical amendments" and do not
20 change the financial obligations between the parties, and further
21 provided that all such amendments shall be subject to appropriate
22 legal review and approval by the General Counsel, or his designee,
23 and all other appropriate official action required by law. The
24 term "technical amendments" as used in this section shall include,
25 but not be limited to, changes in legal descriptions and surveys,
26 description of improvements, ingress and egress, easements and
27 right of ways, design standards, and vehicle access and site plan,
28 which have no financial impact.

29 **Section 7. Effective Date.** This ordinance shall become
30 effective upon signature by the Mayor or upon becoming effective
31 without the Mayor's signature.

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33 Form Approved:

34
35 /s/ Margaret M. Sidman

36 Office of General Counsel

37 Legislation prepared by: John Germany

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39 Agreement-Original.doc

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