
CITY OF SMYRNA
(a municipal corporation duly created and
existing under the laws of
the State of Georgia)

and

DOWNTOWN SMYRNA DEVELOPMENT AUTHORITY
(a body corporate and politic and public corporation duly created and
existing under the laws of the State of Georgia)

**INTERGOVERNMENTAL ECONOMIC
DEVELOPMENT AGREEMENT**

Dated as of August 1, 2024

THE RIGHTS AND INTEREST OF THE DOWNTOWN SMYRNA DEVELOPMENT AUTHORITY IN THIS INTERGOVERNMENTAL ECONOMIC DEVELOPMENT AGREEMENT AND THE REVENUES AND RECEIPTS DERIVED HEREFROM, EXCEPT FOR ITS UNASSIGNED RIGHTS, AS DEFINED HEREIN, HAVE BEEN COLLATERALLY ASSIGNED AND PLEDGED TO SECURE THE BONDHOLDERS (AS DEFINED HEREIN) PURSUANT TO A MASTER BOND RESOLUTION ADOPTED BY THE DOWNTOWN SMYRNA DEVELOPMENT AUTHORITY ON JULY 23, 2024.

**INTERGOVERNMENTAL ECONOMIC
DEVELOPMENT AGREEMENT**

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Development Agreement and is only for convenience of reference.)

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INTERGOVERNMENTAL ECONOMIC DEVELOPMENT AGREEMENT

This **INTERGOVERNMENTAL ECONOMIC DEVELOPMENT AGREEMENT** (this “**Contract**”), made and entered into as of August 1, 2024, by and between the City of Smyrna (the “**City**”), a municipal corporation duly created and existing under the laws of the State of Georgia, and the Downtown Smyrna Development Authority (the “**Authority**”), a body corporate and politic and public corporation duly created and existing under the laws of the State of Georgia;

W I T N E S S E T H:

WHEREAS, the Authority proposes to issue, sell, and deliver its revenue bonds to be known as “Downtown Smyrna Development Authority Revenue Bonds, Federally Taxable Series 2024” (the “**Series 2024 Bonds**”), in the original aggregate principal amount of \$_____, for the purpose of obtaining funds to finance the costs of acquiring and renovating or demolishing properties located at _____ in Smyrna, Georgia to be held for sale for redevelopment for commercial and residential uses or to be rented for event purposes (the “**Properties**”) and to finance a portion of the costs of issuing the Series 2024 Bonds; and

WHEREAS, the Authority and the City propose to enter into this Contract, under the terms of which (1) the Authority will agree to acquire and renovate or demolish the Properties to be held for sale for redevelopment for commercial and residential uses or to be rented for event purposes and (2) the City will agree (a) to make payments to the Authority in amounts sufficient to enable the Authority to pay, among other things, the principal of, premium, if any, and interest on the Series 2024 Bonds when due and (b) to levy an annual ad valorem tax on all taxable property located within the corporate limits of the City, at such rates within the three (3) mill limit authorized pursuant to Section 48-5-350 of the Official Code of Georgia Annotated and within the fifteen (15) mill limit prescribed by Section 50 of the City’s Charter or such greater millage limit hereafter authorized under applicable law, as may be necessary to produce in each year revenues that are sufficient to fulfill the City’s obligations under this Contract; and

WHEREAS, the Authority proposes to issue the Series 2024 Bonds pursuant to a Master Bond Resolution adopted by the Authority on July 23, 2024, as supplemented and amended by a Supplemental Series 2024 Bond Resolution adopted by the Authority on August __, 2024 (collectively the “**Bond Resolution**”); and

WHEREAS, to secure its obligation to pay principal of, premium, if any, and interest on the Series 2024 Bonds, the Authority proposes to collaterally assign and pledge for the benefit of the owners of the Series 2024 Bonds all of its right, title, and interest in this Contract (except for the Unassigned Rights, as defined herein) and all revenues, payments, receipts, and moneys to be received and held thereunder, pursuant to the Bond Resolution;

NOW, THEREFORE, in consideration of the respective covenants, representations, and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the City and the Authority agree as follows:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere herein, the following words and terms shall have the meanings specified below, unless the context or use indicates another or different meaning or intent:

“Act” means an amendment to Article VII, Section VII, Paragraph I of the Constitution of the State of Georgia of 1945 (1970 Ga. Laws 1117 to 1119, inclusive), now specifically continued as a part of the Constitution of the State of Georgia of 1983 pursuant to Article XI, Section I, Paragraph IV of the Constitution of the State of Georgia of 1983 and an Act of the General Assembly of the State of Georgia (1986 Ga. Laws 3957 to 3958, inclusive), as implemented by an Act of the General Assembly of the State of Georgia (1989 Ga. Laws 4382 to 4396, inclusive), and as the same may be from time to time supplemented and amended.

“Additional Bonds” means the additional parity Bonds authorized to be issued by the Authority pursuant to the terms and conditions of Section 2.9 of the Bond Resolution.

“Additional Contract” means a contract or supplemental agreement entered into after the date hereof binding the City pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, pursuant to the terms of which a payment obligation is created or expanded from the City to the other party to such contract, except for any such contract or supplemental agreement that obligates the City to levy an annual ad valorem tax on all taxable property located within the corporate limits of the City, as now existent and as the same may hereafter be extended, at such rate or rates, without limitation as to rate or amount, as may be necessary to produce in each year revenues that will be sufficient to fulfill the City’s obligations under such contract or supplemental agreement.

“Additional Economic Development Contract” means any Additional Contract that obligates the City to levy the municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision, to provide revenues to fulfill the City’s obligations under such Additional Contract.

“Authority” shall have the meaning assigned to that term in the recitals to this Contract and its successors and assigns.

“Bond Counsel” means any firm of nationally recognized bond counsel experienced in matters relating to tax-exempt financing, appointed by the Authority at the direction of the City.

“Bond Documents” means, collectively, the Bond Resolution and the Bonds.

“Bond Resolution” shall have the meaning assigned to that term in the recitals to this Contract, as it may be amended, restated, supplemented, or modified from time to time.

“Bondholders” means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the bond registrar.

“Bonds” means the Series 2024 Bonds and all series of Additional Bonds from time to time authenticated and delivered under the Bond Resolution.

“City” shall have the meaning assigned to that term in the recitals to this Contract and its successors and assigns.

“Contract” means this Intergovernmental Economic Development Agreement between the City and the Authority, as it may be supplemented and amended from time to time in accordance with the provisions hereof.

“Contracts” means this Contract, the Prior Contracts, and all Additional Contracts.

“Fiscal Year” means any period of twelve consecutive months adopted by the City as its fiscal year for financial reporting purposes and shall initially mean the period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a joint venture, a trust, an unincorporated organization, a governmental unit or an agency, a political subdivision or instrumentality thereof, or any other group or organization of individuals.

“Prior Contracts” means (1) the Agreement of Sale, dated as of July 1, 2001, between the Issuer and the City, (2) the Agreement of Sale, dated as of September 1, 2016, between the Issuer and the City, and (3) the Agreement of Sale, dated as of June 1, 2021, between the Issuer and the City.

“Properties” shall have the meaning assigned to that term in the recitals to this Contract, legal descriptions of which are attached hereto as Exhibit A.

“Series 2024 Bonds” shall have the meaning assigned to that term in the recitals to this Contract.

“Series 2024 Disclosure Certificate” means the Continuing Disclosure Certificate, dated the date of issuance of the Series 2024 Bonds, of the City, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Sinking Fund” means the Sinking Fund created in Section 4.2 of the Bond Resolution and referred to herein.

“Sinking Fund Custodian” means initially Regions Bank, Atlanta, Georgia, and its successors and assigns, or any successor custodian for the Sinking Fund hereafter appointed by the Authority at the direction of the City; provided, however, the Sinking Fund Custodian shall at all times be a commercial bank.

“Tax-Exempt Bonds” means any Bonds the interest on which has been determined, in an unqualified opinion of Bond Counsel, to be excludable from the gross income of the owners thereof for federal income tax purposes.

“**Unassigned Rights**” means all of the rights of the Authority to receive reimbursements and payments pursuant to Section 5.1(c) and (d) hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE CITY

Section 2.1. Representations and Warranties by the City. The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Creation and Authority. The City is a municipal corporation duly created and validly existing under the laws of the State of Georgia. The City has all requisite power and authority under the laws of the State of Georgia to contract for the Authority to acquire and hold for sale for redevelopment or to rent for event purposes the Properties and to enter into, perform its obligations under, and exercise its rights under this Contract.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the City, after making due inquiry with respect thereto, threatened against or affecting the City 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 City, or the ability of the City to perform its obligations under this Contract, or the transactions contemplated by this Contract or which, in any way, would adversely affect the validity or enforceability of this Contract or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the City aware of any facts or circumstances presently existing that would form the basis for any such actions, suits, or proceedings. The City 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) Contract Is Legal and Authorized. The execution and delivery by the City of this Contract, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof (i) are within the power, legal right, and authority of the City; (ii) are legal and will not conflict with or constitute on the part of the City 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 City is a party or by which the City 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 City 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 Mayor and Council of the City. This Contract is a valid, legal, binding, and enforceable obligation of the City. The officials of the City executing this Contract are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the City.

(d) Governmental Consents. Neither the City nor any of its activities or properties, nor any relationship between the City and any other Person, nor any circumstances in connection with the execution, delivery, and performance by the City of its obligations under this Contract or the offer, issue, sale, or delivery by the Authority of the Bonds, 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 City in connection with the execution, delivery, and performance of this Contract or the consummation of any transaction herein contemplated, or the offer, issue, sale, or delivery of the Bonds, 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 City, after making due inquiry with respect thereto, the City 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 City is legally required to obtain the same.

(e) No Defaults. To the knowledge of the City, after making due inquiry with respect thereto, the City 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, which default might materially and adversely affect the performance by the City of its obligations under this Contract.

(f) Compliance with Law. To the knowledge of the City, after making due inquiry with respect thereto, the City 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 City, and there have been no citations, notices, or orders of noncompliance issued to the City under any such law, ordinance, rule, or regulation.

(g) Restrictions on the City. The City 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). The City is not a party to any contract or agreement that restricts the right or ability of the City to enter into agreements for the ownership, availability, sale for redevelopment, or rent of the Properties by the Authority in exchange for payments on an installment basis, except for the Prior Contracts.

(h) Millage Limitations. There is not presently in force and effect any other contract or agreement that obligates the City to levy the three (3) mill municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated, to provide revenues to fulfill the City's obligations under such contract or agreement. There is not presently in force and effect any other contract or agreement binding the City pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, pursuant to the terms of which a payment obligation exists from the City to the other party to such contract, which payment obligation is subject to the fifteen (15) mill limit prescribed by the City's Charter, except for the Prior Contracts. The Authority and the City have obtained documentation evidencing that the

conditions of the Prior Contracts have been satisfied, in order to permit the Authority and the City to enter into this Contract, which documentation is attached to this Contract as Exhibit B.

(i) Disclosure. The representations of the City contained in this Contract and any certificate, document, written statement, or other instrument furnished by or on behalf of the City to the Authority 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 City has not disclosed to the Authority in writing that materially and adversely affects or in the future may (so far as the City can now reasonably foresee) materially and adversely affect the properties, activities, prospects, operations, profits, or condition (financial or otherwise) of the City, or the ability of the City to perform its obligations under this Contract or any of the documents or transactions contemplated hereby or thereby or any other transactions contemplated by this Contract, which has not been set forth in writing to the Authority or in the certificates, documents, and instruments furnished to the Authority by or on behalf of the City prior to the date of execution of this Contract in connection with the transactions contemplated hereby.

(j) Financial Statements. The balance sheet of the City's Governmental Funds as of June 30, 2023, and the statement of revenues, expenditures, and changes in fund balances of the City's Governmental Funds for the year ended June 30, 2023 (copies of which, audited by Nichols, Cauley & Associates, LLC, independent certified public accountants, have been furnished to the Authority) present fairly the financial position of the City's Governmental Funds as of June 30, 2023, and the changes in financial position for the year ended June 30, 2023, with such exceptions as may be disclosed in the audit report. Since June 30, 2023, there has been no material adverse change in the financial position or changes in financial position of the City's Governmental Funds, except as disclosed in writing to the Authority.

(k) Sovereign Immunity. The City may not assert the defense of sovereign immunity to any action at law (as opposed to equity) for the breach of this Contract or to any action at law (as opposed to equity) to enforce a judgment taken for the breach of this Contract.

Section 2.2. Reliance by Bondholders. The City acknowledges and agrees that these representations and warranties are made to induce the Bondholders to purchase the Bonds and that such representations and warranties and any other representations and warranties made by the City in this Contract are made for the benefit of the Bondholders and may be relied upon by the Bondholders and shall remain operative and in full force and effect, regardless of any investigations made by any Bondholder or on its behalf, and shall survive delivery of the Bonds to the Bondholders.

ARTICLE III

TERM OF CONTRACT; CONTRACT AS SECURITY FOR BONDS

Section 3.1. Term. The term of this Contract shall commence with the execution and delivery hereof and shall extend until 91 days after the principal of, premium, if any, and interest on the Bonds and all other amounts payable under the Bond Documents have been paid in full or until provision has been duly made therefor, but in no event shall the term hereof exceed fifty

years from the date hereof. The obligations of the City set forth in Section 5.1(c) and (d) hereof shall survive the termination of this Contract, but in no event shall extend beyond fifty years from the date hereof.

Section 3.2. This Contract as Security for the Bonds. The parties hereto agree and intend that:

(a) This Contract shall constitute security for the benefit of the Bondholders and the obligations of the City hereunder shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim, except for payment, it may otherwise have against the Authority. The City agrees that it shall not (i) withhold, suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue any payments provided for in Section 5.1 hereof; (ii) fail to observe any of its other agreements contained in this Contract; or (iii) terminate its obligations under this Contract for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Authority to own, make available, sell for redevelopment, or rent any Properties; any change or delay in the time of availability of any Properties; any acts or circumstances that may impair or preclude the use or possession of any Properties; any defect in the title, merchantability, fitness, or condition of any Properties or in the suitability of any Properties for the Authority's or the City's purposes or needs; failure of consideration; any declaration or finding that any of the Bonds are unenforceable or invalid; the invalidity of any provision of this Contract; any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to any Properties, or the taking by eminent domain of title to or the use of all or any part of any Properties; commercial frustration of purpose; any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either thereof or in the rules or regulations of any governmental authority; or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Contract. Nothing contained in this Section 3.2(a) shall be construed to release the Authority from the performance of any of the agreements on its part herein contained. In the event the Authority should fail to perform any such agreement on its part, the City may institute such action against the Authority as the City may deem necessary to compel performance so long as such action does not abrogate or limit in any way the City's obligations hereunder. The Authority hereby agrees that it shall not take or omit to take any action that would cause this Contract to be terminated.

(b) The payments to be made under Section 5.1(a) and (b) of this Contract by the City to the Authority will be assigned and pledged by the Authority for the benefit of the Bondholders pursuant to the Bond Resolution.

(c) Following the issuance of the Series 2024 Bonds, the payments to be made to the Authority by the City under the provisions of Section 5.1(a) and (b) of this Contract shall be made directly to the Sinking Fund Custodian (as defined in the Bond Resolution) for the account of the Authority for deposit in the Sinking Fund.

(d) This Contract may not be amended, changed, modified, altered, or terminated except as provided in the Bond Resolution.

(e) The Authority may collaterally assign or otherwise collaterally transfer its rights in this Contract to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to the Authority herein or otherwise. It is understood and agreed that the Authority, contemporaneously with the execution and delivery of this Contract, will collaterally assign its rights under this Contract for the benefit of the Bondholders pursuant to the Bond Resolution, and the City hereby consents to the collateral assignment. Upon the issuance and delivery of the Series 2024 Bonds, all appointments, designations, representations, warranties, covenants, assurances, remedies, title, interest, privileges, permits, licenses, and rights of every kind whatsoever herein conferred upon the Authority shall be deemed to be conferred also upon the Bondholders, and any reference herein to the Authority shall be deemed, with the necessary changes in detail, to include the Bondholders, and the Bondholders are deemed to be and are third party beneficiaries of the representations, covenants, and agreements of the City herein contained.

ARTICLE IV

AUTHORITY'S OBLIGATIONS HEREUNDER

Section 4.1. Issuance of Series 2024 Bonds; Application of Bond Proceeds and Other Funds. The Authority agrees that simultaneously with the execution and delivery hereof it will issue the Series 2024 Bonds containing the terms, including principal amount, interest rates, and maturities, set forth in the Bond Resolution, for the purposes of (1) financing the costs of acquiring and renovating or demolishing the Properties and (2) financing the costs of issuing the Series 2024 Bonds. The Authority hereby covenants and agrees that it will apply the proceeds derived from the sale of the Series 2024 Bonds as specified in Section 12.2 of the Bond Resolution. The Authority will use all revenues derived from the operation of the Properties to pay the costs of operating the Properties.

Section 4.2. The Properties. The Authority agrees that throughout the term of this Contract title to the Properties shall be vested in and shall be the sole property of the Authority, subject to any liens, leases, or licenses that the Authority, with the written consent of the City, may create during the term of this Contract. The Authority shall, as directed by the City, negotiate sales, leases, and licenses of the Properties and work with prospective purchasers and prospective tenants and licensees of the Properties upon such terms and conditions as are directed by the City and as are permitted by the Act. The Authority shall investigate and make financial analyses and recommendations to the City with respect to all proposals submitted by such prospective purchasers, tenants, or licensees desiring to purchase, lease, or license the Properties. The Authority agrees that the proceeds of any sale, lease, license, or other disposition of any of the Properties shall be deposited or disposed of as directed by the City (including, if directed by the City, transferred to the City). The City agrees that none of the sale, lease, license, or other disposition of all or any portion of the Properties or any interest therein shall affect its obligations under this Contract.

Section 4.3. [Reserved].

Section 4.4. Additional Bonds. (a) Additional Bonds may be issued by the Authority to provide funds to pay any one or more of the following: (i) the costs of acquiring, constructing,

and installing any capital improvements to the Properties as the City may deem necessary or desirable and as will not impair the nature of the Properties; (ii) to refund any Bonds; and (iii) the costs of the issuance and sale of the Bonds and capitalized or funded interest for such period and such other costs reasonably related to the financing as shall be agreed upon by the City and the Authority.

(b) If the City is not in default hereunder, the Authority may, on request of the City, from time to time in its sole discretion issue the amount of Additional Bonds specified by the City; provided that the sale of any Additional Bonds shall be the sole responsibility of the City, and provided further that the City and the Authority shall have entered into an amendment to this Contract to provide for additional payments in an amount at least sufficient to pay principal of and interest on the Additional Bonds when due and to provide for any additional terms or changes to this Contract required because of such Additional Bonds, and provided further that the Authority shall have otherwise complied with the provisions of Section 2.9 of the Bond Resolution with respect to the issuance of such Additional Bonds.

Section 4.5. Redemption of Bonds. The Authority, at the written request of the City at any time and if the Bonds are then callable or available for purchase, and if there are funds available therefor, shall forthwith take all steps that may be necessary under the applicable redemption or purchase provisions of the Bond Resolution to effect redemption or purchase of all or part of the then unpaid Bonds, as may be specified by the City, on the earliest date on which such redemption or purchase may be made under such applicable provisions.

ARTICLE V

CITY'S OBLIGATIONS HEREUNDER

Section 5.1. City's Payment Obligations. In order to provide financial assistance to the Authority for the purpose of developing trade, commerce, industry, and employment opportunities, the City agrees that:

(a) It shall pay to the Authority, by making such payments directly to the Sinking Fund Custodian for the account of the Authority for deposit in the Sinking Fund held under the Bond Resolution on or before January 25 and July 25 of each year, an amount sufficient, when added to funds held at the time of such payment in the Sinking Fund, to cause the balance held therein to equal the full amount of principal of, premium, if any, and interest on the Bonds coming due on the next succeeding interest payment date with respect to the Bonds.

(b) The provisions of paragraph (a) above to the contrary notwithstanding, if, for any reason, on the business day preceding any interest payment date and any redemption date with respect to the Bonds, there is not on deposit in the Sinking Fund moneys sufficient to pay the total principal, interest, and premium coming due on the Bonds on such interest payment date or redemption date (whether by mandatory redemption, maturity, or otherwise), the City shall on such date pay to the Authority, by making such payments directly to the Sinking Fund Custodian for the account of the Authority for deposit into the Sinking Fund, an amount equal to the amount by which the total principal, interest, and premium coming due on the Bonds (whether by mandatory redemption, maturity, or otherwise) on the next interest payment date or

redemption date exceeds the amount in the Sinking Fund (and not being held for the payment of Bonds not yet presented for payment or interest checks not cashed).

(c) It shall also pay to the Authority an amount equal to any costs incurred by the Authority in connection with the issuance and carrying of any series of Bonds and the renovation of the Properties to the extent such costs are not paid from proceeds of such Bonds.

(d) In addition to and over and above the sums set forth in Section 5.1(a), (b), and (c) of this Contract, the City shall pay additional monthly payments to the Authority as may be necessary to assure the continuous operation of the Properties and to provide reasonable reserves for contingencies and for the maintenance and repair of the properties constituting, and the services provided by, the Properties.

Section 5.2. Security for Payments under this Contract; Limitations on Additional Contracts. (a) As security for the payments required to be made and the obligations required to be performed by the City under this Contract, the City hereby pledges to the Authority its full faith and credit and taxing power for such payment and performance. The City covenants that, in order to make any payments when due under Section 5.1 hereof from its general funds to the extent required hereunder, it shall exercise its power of taxation to the extent necessary to pay the amounts required to be paid hereunder and will make available and use for such payments all taxes levied and collected for that purpose together with funds received from any other sources. The City further covenants and agrees that in order to make funds available for such purpose in each Fiscal Year, it will, in its general 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 Section 5.1 hereof, whether or not any other sums are included in such measure, until all payments so required to be made under Section 5.1 hereof shall have been made in full. The obligation of the City to make any payments that may be required to be made from its general funds 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 to fulfill any such obligation. In the event for any reason any such provision or appropriation is not made as provided in this Section 5.2, then the fiscal officers of the City 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 general funds of the City. 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 City had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal officers of the City shall make such payments due under Section 5.1 hereof to the Authority if for any reason the payment of such obligations shall not otherwise have been made.

(b) The City covenants and agrees that it shall, to the extent necessary, levy an annual ad valorem tax on all taxable property located within the corporate limits of the City, as now existent and as the same may hereafter be extended, at such rate or rates, within the three (3) mill limit authorized pursuant to Section 48-5-350 of the Official Code of Georgia Annotated and within the fifteen (15) mill limit prescribed by Section 50 of the City's Charter or within such greater millage as may hereafter be prescribed by applicable law, as may be necessary to produce in each year revenues that will be sufficient to fulfill the City's obligations under this Contract,

from which revenues the City agrees to appropriate sums sufficient to pay in full when due all of the City's obligations under this Contract. The City hereby creates and grants a lien in favor of the Authority on any and all revenues realized by the City from such tax, to make the payments that are required under this Contract, which lien is superior to any that can hereafter be created, except that this lien may be extended to cover any Additional Contracts, as permitted by Section 5.2(e) and (f) hereof. Nothing herein contained, however, shall be construed as limiting the right of the City to make the payments called for by this Contract out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds and collections of special purpose local option sales tax).

(c) The City's obligation to levy an annual ad valorem tax within the three (3) mill limit authorized by Section 48-5-350 of the Official Code of Georgia Annotated and within the fifteen (15) mill limit prescribed by Section 50 of the City's Charter, or such greater millage hereafter authorized by law, for the purpose of providing funds to meet the City's payment obligations under this Contract shall not be junior and subordinate, but shall be superior or equal to the City's obligation to levy an annual ad valorem tax at such rate or rates within such three (3) mill limit and such fifteen (15) mill limit, or such greater millage as hereafter prescribed by law, pursuant to any applicable provisions of the Prior Contracts and any Additional Contract. It is expressly provided, however, that the City shall not be required to levy a tax in any year at a rate or rates exceeding in the aggregate the maximum three (3) mills now authorized by Section 48-5-350 of the Official Code of Georgia Annotated, the maximum fifteen (15) mill limit prescribed by Section 50 of the City's Charter, or any greater millage hereafter prescribed by law, in order to meet its obligations under the Contracts.

(d) During the term of this Contract, the City shall not:

(1) enter into an Additional Contract that creates a lien on the revenues to be derived from the tax to be levied hereunder by the City to fulfill its obligations hereunder, which is superior to the lien created hereunder;

(2) enter into any other contract or agreement creating a lien on such tax revenues for any purpose other than debt service payments (including creation and maintenance of reasonable reserves therefor) superior to or on a parity with the lien created thereon to fulfill the obligations of the City hereunder;

(3) enter into any Additional Economic Development Contract that provides for payment to be made by the City from moneys derived from the levy of a tax within the maximum millage now or hereafter authorized by law if each annual payment of all amounts payable with respect to debt service or which are otherwise fixed in amount or currently budgeted in amount under all Contracts then in existence that obligate the City to levy the municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision, together with each annual payment to be made under the proposed Additional Economic Development Contract, in each future Fiscal Year, would exceed the amount then capable of being produced by a levy of a tax within the maximum millage now or hereafter authorized by law on the taxable value of property located within the corporate limits of the City subject to taxation for such

purposes, as shown by the latest tax digest available immediately preceding the execution of any such Additional Economic Development Contract; and

(4) enter into any Additional Contract that provides for payment to be made by the City from moneys derived from the levy of a tax within the maximum millage now or hereafter authorized by law if each annual payment of all amounts payable with respect to debt service or which are otherwise fixed in amount or currently budgeted in amount under all Contracts then in existence, together with each annual payment to be made under the proposed Additional Contract, in each future Fiscal Year, would exceed the amount then capable of being produced by a levy of a tax within the maximum millage now or hereafter authorized by law on the taxable value of property located within the corporate limits of the City subject to taxation for such purposes, as shown by the latest tax digest available immediately preceding the execution of any such Additional Contract.

(e) It is further expressly provided that during the term of this Contract, the City shall not hereafter enter into any Additional Economic Development Contract for the purpose of debt service payments (including creation and maintenance of reserves therefor), unless the amount then capable of being produced by the levy of a municipal tax within the maximum millage then authorized under Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision on all taxable property within the corporate limits of the City, as shown by the latest tax digest available immediately preceding the execution of such Additional Economic Development Contract, is equal to at least one and twenty-five hundredths (1.25) times the maximum combined amount payable in any future Fiscal Year with respect to debt service under all existing Contracts that obligate the City to levy the municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision and any such Additional Economic Development Contract. The City shall furnish the Authority, not less than five (5) nor more than sixty (60) days prior to the date of execution and delivery of any such Additional Economic Development Contract, a report of an independent certified public accountant to the effect that, based upon an affidavit of the Tax Commissioner of Cobb County as to the taxable value of property located within the corporate limits of the City, the requirements of this paragraph (e) have been met.

(f) It is further expressly provided that during the term of this Contract, the City shall not hereafter enter into any Additional Contract for the purpose of debt service payments (including creation and maintenance of reserves therefor), unless the amount then capable of being produced by the levy of an ad valorem tax within the maximum millage then prescribed by the City's Charter or any successor provision on all taxable property within the corporate limits of the City, as shown by the latest tax digest available immediately preceding the execution of such Additional Contract, is equal to at least one and twenty five hundredths (1.25) times the maximum combined amount payable in any future Fiscal Year with respect to debt service under all existing Contracts and any such Additional Contract. The City shall furnish the Authority, not less than five (5) nor more than sixty (60) days prior to the date of execution and delivery of any such Additional Contract, a report of an independent certified public accountant to the effect that, based upon an affidavit of the Tax Commissioner of Cobb County as to the taxable value of property located within the corporate limits of the City, the requirements of this paragraph (e) have been met.

(g) Debt service for purposes of paragraphs (e) and (f) of this Section 5.2 shall mean required payments of principal, including principal to be paid through mandatory redemption, interest, and amounts required to be paid for creation and maintenance of reasonable debt service reserves and to establish and maintain mandatory investment programs, less principal and interest received or to be received from investment of any of the foregoing amounts (except funds on hand or to be on hand in any debt service reserve) required to be applied to debt service in each Fiscal Year.

Section 5.3. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Series 2024 Disclosure Certificate. Notwithstanding any other provision of this Contract, failure of the City to comply with the Series 2024 Disclosure Certificate shall not be considered a default hereunder; however, any beneficial owner of the Series 2024 Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section 5.3.

Section 5.4. Tax-Exempt Status of Tax-Exempt Bonds. The City recognizes that the purchasers and owners of the Tax-Exempt Bonds will have accepted the Tax-Exempt Bonds on, and paid for the Tax-Exempt Bonds a price that reflects, the understanding that interest on the Tax-Exempt Bonds is excluded from the gross income of the owners for federal income tax purposes under laws in force at the time the Tax-Exempt Bonds shall have been delivered.

The City covenants that it shall not take or omit to take any action nor permit any action to be taken or omitted that would cause the interest on any Tax-Exempt Bonds to become includable in the gross income of any owner thereof.

The City further covenants and agrees that it shall comply with the representations and certifications it made in its City's Tax Certificate dated the date of issuance of any Tax-Exempt Bonds and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

The City agrees to furnish the Authority any items (including, without limitation, certificates of the City and opinions of Bond Counsel) reasonably requested by it to evidence compliance with the covenants contained in this Section 5.4.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Governing Law. This Contract and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed, and interpreted according to the laws of the State of Georgia.

Section 6.2. Entire Agreement. This Contract expresses the entire understanding and all agreements between the parties hereto.

Section 6.3. Severability. If any provision of this Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any

jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

Section 6.4. Survival of Warranties. All agreements, representations, and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

Section 6.5. Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 6.6. Amendments in Writing. No waiver, amendment, release, or modification of this Contract shall be established by conduct, custom, or course of dealing, but solely by an instrument in writing only executed by the parties hereto in accordance with the Bond Resolution.

Section 6.7. Notices. Except as otherwise specifically provided herein, any notices, demands, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed given when the writing is delivered in person or five days after being mailed, if mailed, by certified mail, return receipt requested, postage prepaid, to the City and the Authority, respectively, at the addresses shown below or at such other addresses as may be furnished by the City or the Authority in writing from time to time:

City:	City of Smyrna 2800 King Street, S.E. Smyrna, Georgia 30080-3506 Attention: City Administrator
Authority:	Downtown Smyrna Development Authority 2800 King Street, S.E. Smyrna, Georgia 30080-3506 Attention: Chairman

Section 6.8. Limitation of Rights. Nothing in this Contract, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder and any third party beneficiaries hereof, any benefit or any legal or equitable right, remedy, or claim under this Contract.

[Signatures and Seals to Follow]

IN WITNESS WHEREOF, the City and the Authority have caused this Contract to be executed in their respective corporate names and have caused their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the day and year first above written.

(SEAL)

CITY OF SMYRNA

Attest:

By: _____
Mayor

City Clerk

(SEAL)

**DOWNTOWN SMYRNA DEVELOPMENT
AUTHORITY**

Attest:

By: _____
Chairman

Secretary/Treasurer

EXHIBIT A
DESCRIPTION OF PROPERTIES

[Attached]

EXHIBIT B

**DOCUMENTATION SATISFYING
CONDITIONS OF PRIOR CONTRACTS**

[Attached]