



City Council Meeting - Final

September 18, 2023
7:00 PM

F. ATH2023-36 Approval of a Memorandum of Understanding between the City of Smyrna, Ga and Smyrna First Baptist Church and authorize the Mayor to sign and execute all related documents.



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: ATH2023-36

Agenda Date: 9/18/2023

In Control: City Council

File Type: Authorization

Agenda Section:
Formal Business

Agenda Number: **F.**

Department: Administration

Agenda Title:

Approval of a Memorandum of Understanding between the City of Smyrna, Ga and First Baptist Church of Smyrna and Authorize the Mayor to sign and execute all related documents.

Ward 3 Councilmember - Travis Lindley

ISSUE AND BACKGROUND:

The City and Smyrna First Baptist Church have reached an agreement where the city would purchase the existing church property and the church would purchase City owned property on Atlanta Road and relocate there.

This would allow the City to expand its downtown and allow the church to remain in the City.

RECOMMENDATION / REQUESTED ACTION:

This item is recommended for approval of a Memorandum of Understanding between the City of Smyrna, Ga and First Baptist Church of Smyrna and Authorize the Mayor to sign and execute all related documents.

MEMORANDUM OF UNDERSTANDING
Property Sale and Ground Lease Agreement

First Baptist Church of Smyrna, Georgia, Inc., a Georgia nonprofit corporation (“**Smyrna First**”), the Downtown Smyrna Development Authority (“**DDA**”), and the City of Smyrna, Georgia, a municipality of the State of Georgia (“**City**”), have agreed to the following terms and conditions related to the sale of real property and improvements (and ground leaseback to Smyrna First of all property currently owned by Smyrna First) pursuant to two (2) separate definitive agreements (the “Definitive Agreements”) the terms to be contained therein (among others) being such following terms and conditions:

DDA Property: An approximately 5.5-acre assemblage of property owned by DDA located on Atlanta Road in City of Smyrna, Cobb County, Georgia. One such Definitive Agreement shall be for sale of the DDA Property to Smyrna First in fee simple.

Smyrna First Property: An approximately 8.9-acre improved real property located at 1275 Church Street, Smyrna, Georgia. The other Definitive Agreement shall be for sale of the Smyrna First Property to DDA in fee simple.

Transfer of Title: As more fully outlined below:

- DDA shall convey fee simple title to the DDA Property to Smyrna First;
- Smyrna First shall convey fee simple title to the Smyrna First Property (and the improvements thereon) to DDA;
- DDA shall ground lease (the “New Ground Lease”) the entire Smyrna First Property (and all improvements) back to Smyrna First;
- The New Ground Lease shall be for 3 years;
- The New Ground Lease shall be assignable by Smyrna First to a subsidiary and the subsidiary shall be entitled to sublease the Smyrna First Property in its sole and absolute discretion;
- City shall not be entitled to use, request, or encumber the Smyrna First Property during the entire term of the New Ground Lease; and
- City shall provide for the use of a field and courts sufficient to accommodate an outdoor recreational programming and ministry of Smyrna First (at no cost to Smyrna First), consistent with how Smyrna First has used City fields and courts for such programming and ministry in the past (for generations).

Gross Consideration: Prior to receiving the credits specified herein, DDA shall pay \$15,800,000 to Smyrna First for the purchase of the Smyrna First Property (“Smyrna Gross Consideration”). Smyrna First shall pay \$3,300,000 to DDA for purchase of the DDA Property (“DDA Gross Consideration”).

At Closing, DDA shall execute a restrictive covenant declaring that the currently existing original Church Chapel (the “Chapel”) shall be preserved and maintained by the DDA in a manner that is generally consistent with its current condition, at DDA’s sole cost and expense. Except during the term of the New Ground Lease in favor of Smyrna First (which shall mean, *ipso facto*, that Smyrna First controls the Chapel and its uses (as well as the remainder of the Smyrna First Property)), the parties agree that the restrictive covenant shall not limit the use of the Chapel. DDA agrees that Smyrna First shall have the right, but no obligation, during the term of the New Ground Lease to remove, at its sole cost and expense all stained-glass windows on the Smyrna

First Property and replace them with reasonable windows in a good and workmanlike fashion. Furthermore, at any time during the pendency of the New Ground Lease, Smyrna First shall have the right to remove fixtures, trade fixtures and equipment from the Smyrna First Property without obligation to replace same.

Prior to Smyrna First's completion of construction of its new church facility on the DDA Property, City shall, at its sole cost and expense, install an electrified traffic signal (with turn signal) and any county- or city-required lane improvements (including, without limitation, obtaining any right of way from third parties) on Atlanta Road toward the southern end of the DDA Property. Programming of such traffic signal shall take into account Smyrna First's operational demands on such signal, including, without limitation, Sundays and Wednesday evenings (and school hours). The foregoing signal being the "New Traffic Signal". As part of the New Traffic Signal installation, City shall also procure all approvals related to the New Traffic Signal, including, but not limited to, State and or Cobb County DOT approvals.

New Ground Lease:

City and DDA shall work in good faith with Cobb County tax assessor to ensure the New Ground Lease is not subject to ad valorem real estate tax.

Subject to the foregoing, Smyrna First and DDA agree that the New Ground Lease is to be 3 years, with the right for Smyrna First to extend for an additional year at the same rate specified herein, which extension shall be for no less than one (1) year) but shall also be able to be terminated early by Smyrna First (in its sole and absolute discretion) which early termination shall result in a prorated portion of such one (1) year period's rent only being due or payable to DDA. Without limiting the foregoing, City and Smyrna First agree that Smyrna First can, in its sole and absolute discretion, unilaterally terminate the New Ground Lease at any time. Smyrna First and DDA understand, acknowledge and agree that notwithstanding anything contained herein to the contrary, if Smyrna First is legally entitled to a certificate of occupancy and the New Traffic Signal has not been installed, the New Ground Lease shall extend automatically (after the first three-year term), day for day, without payment of rent to any kind until the New Traffic Signal is installed and operating.

DDA Credits:

As a credit against the Smyrna First Gross Consideration, DDA shall receive \$100,000 as compensation for City fully demolishing all improvements on the DDA Property, including, without limitation, removal of all structures, hazardous waste and materials, debris, utilities, and concrete at the DDA Property. The foregoing work being the "Demolition and Utility Work".

Also, as a credit against the Smyrna First Gross Consideration, DDA shall receive \$300,000 in total consideration for the New Ground Lease. Smyrna First shall have the right to extend the lease for a period of one year at the same rate as the initial lease; provided, however, that, notwithstanding the foregoing, Smyrna First shall have the right to such an extension in exchange for no rent payment to DDA in the event one or more of the following events occurs:

(1) Smyrna First is legally entitled to a certificate of occupancy and the New Traffic Signal is not installed or is not functioning as designed;

(2) City suspends or revokes any building permit in favor of Smyrna First (or any contractor acting for Smyrna First) and neither Smyrna First nor its contractors are in breach or violation of law regarding such permit;

(3) City or DDA are in material breach of any definitive agreement or any restrictive covenant in favor of Smyrna First; and

(4) a major casualty not caused by Smyrna First (including, without limitation, any force majeure, including without limitation, rain more than typical during the period which Smyrna First is constructing improvements on the DDA Property) or major condemnation has affected the DDA Property.

**Net
Consideration:**

After completing the work and receiving the credits referenced herein, the Net Contribution of the DDA will be \$15,400,000.00 for the Smyrna First Property and the Net Contribution of Smyrna First shall be \$3,300,000.00.

City, DDA and Smyrna First agree to work in good faith to execute Definitive Agreements as outlined herein.

**Definitive
Agreements:
Earnest Money:**

Each party shall deposit \$25,000 within five (5) business days of execution of the Definitive Agreements, except as provided below, and the party's deposit shall be refundable to each party if the Closing does not take place.

**Due Diligence
Period:**

The parties shall have ninety (90) days to conduct their respective due diligence of the DDA Property and the Smyrna First Property. Either party may, on or before the end of the Due Diligence Period, elect to terminate the proposed transaction without financial penalty and with a return of Earnest Money. Either party shall be entitled, in its sole and absolute discretion, to extend the Due Diligence Period for an additional thirty (30) days by providing written notice (such written notice shall be provided as follows: To the DDA, 2800 King Street, Smyrna Georgia, 30080, Attn: Chairman Derek Norton, to the City, 2800 King Street, Smyrna, Georgia, 30080, Attn: mayor Derek Norton, To Smyrna First, 1275 Church Street, Smyrna, Georgia, Attn: Jeff Pennington) of exercise of such extension no later the original date on which the Due Diligence Period is to expire. The Parties acknowledge and agree that Smyrna First requires, as part, but without limiting, its diligence rights, the ability to construct a 60,000 square foot church facility (or larger) with the greater of 275 parking spaces or the number of spaces required by local ordinances for a structure of this size.

**Approvals of
Governing
Boards:**

The failure of any party to obtain the necessary approvals required to enter into this agreement by, for Smyrna First, September 30, 2023, and for DDA and City, September 30, 2023, shall result in termination of the proposed transactions.

**Escrow
Delivery:**

The parties shall deliver the following on the Closing Date:

- Fully executed deeds and the New Ground Lease and lease and use agreements to effectuate the proposed transactions;
- Fully executed closing documents as are customary for transactions of this type; and

- Payments sufficient to fund each party's respective Closing Costs, subject to offset/credit by each party's respective Earnest Money.

In addition, DDA shall deliver to Smyrna First, the Smyrna First Net Consideration to Smyrna First and Smyrna First shall deliver the DDA Net Consideration to DDA .

**Closing
Contingency:**

Closing shall be contingent upon the following (the following being, collectively, the "Closing Contingency"):

(1) City closing on municipal bond financing sufficient to permit DDA to pay the Smyrna First Cash Consideration to Smyrna First;

(2) City completing the Demolition and Utility Work; and

(3) The approval of a City initiated rezoning of the DDA property to allow the use as a church in accordance with the plans submitted by Smyrna First. A standard rezoning contingency will be included in the contract. The parties acknowledge that this does not bind the city council to any particular vote on a rezoning but will give Smyrna First the right to terminate the contract if the property is not rezoned accordingly.

Closing Date:

Closing shall occur by no later than thirty (30) days after the satisfaction of the Closing Contingency in full.

**Failure of
Closing
Contingency:**

The transaction shall be deemed abandoned in the event of a failure to achieve the Closing Contingency on or before the one (1) year anniversary of the execution of the Definitive Agreements (the "Closing Deadline"). Each definitive agreement shall include language giving Smyrna First and DDA equal remedies in the event that the other refuses to close.

Smyrna First, DDA and City agree that the foregoing accurately represents the key business terms for the transaction. This Memorandum Of Understanding is not intended to be a complete summary of all such terms and conditions. Either party reserves the right to cancel negotiations at any time and for any reason whatsoever. This memorandum of understanding may not be relied upon by any party as evidence of a binding agreement or, and no legal rights and obligations between the parties shall be created or deemed to exist until the parties have fully executed and delivered the Definitive Agreements.

[Remainder of this page intentionally left blank; signatures on the next following page.]

**First Baptist Church of Smyrna,
Georgia, Inc.**
a Georgia nonprofit corporation

City of Smyrna, Georgia

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

Downtown Smyrna Development Authority

By: _____
Name: _____
Title: _____

Date: _____