



City Council Meeting - Final

November 20, 2023

7:00 PM

B. ATH2023-51 Approval of an Amended and Restated Galleria Convention Funding Agreement between the City of Smyrna and the Cobb-Marietta Coliseum & Exhibit Hall Authority and authorize the Mayor to execute all related documents.



City of Smyrna

Issue Sheet

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

File Number: **ATH2023-51**

Agenda Date: 11/20/2023

In Control: City Council

File Type: Authorization

Agenda Section:

Agenda Number: B.

Formal Business

Department: Finance

Agenda Title:

Approval of an Amended and Restated Galleria Convention Funding Agreement between the City of Smyrna and the Cobb-Marietta Coliseum & Exhibit Hall Authority and authorize the Mayor to execute all related documents.

Citywide

ISSUE AND BACKGROUND:

The Cobb-Marietta Coliseum and Exhibit Hall Authority (CMCEHA) has requested the City to amend and restate the existing Funding Agreement between CMCEHA and the City of Smyrna. The renewal would extend the agreement term until no later than October 1, 2053. The requested extension is to enable the Authority to have a funding source for revenue bonds that will be issued for planned infrastructure improvements, capital projects and upgrades to existing facilities. The funding formulas in the new agreement remain the same. Sixty-two and a half percent (62.5%) of Hotel-Motel Tax revenue collected within city limits will be dispensed to CMCEHA to fund its operations. Forty (40%) of Hotel-Motel Tax collected is returned to the city. However, the agreement changes so that collection fees are paid to the city monthly rather than annually. Also, the city shares in annual excess tax payment distributions as well as excess fund cap distributions.

CMCEHA owns and operates the Cobb Galleria Centre, Cobb Energy Performing Arts Centre, and Galleria Specialty Shops.

RECOMMENDATION / REQUESTED ACTION:

Staff recommends approval of an Amended and Restated Galleria Convention Funding Agreement between the City of Smyrna and the Cobb-Marietta Coliseum & Exhibit Hall Authority and authorize the Mayor to execute all related documents.

expenditure of County/Cities Hotel/Motel Tax Payments pursuant to a contract with the County or the Authority as a qualified expenditure under the Hotel/Motel Tax Law.

“Effective Date” means October 1, 2023.

“Existing Galleria Project” means the multipurpose convention, exhibit hall and meeting facilities commonly referred to as the Cobb Galleria Centre, any associated parking areas or improvements thereto and all other facilities and improvements determined by the Authority to be necessary or convenient in connection with the Cobb Galleria Centre, which may include, without limitation, related lands, air space, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed for the benefit of the citizens of the County, as the same exists on September 1, 2023.

“Financed Project” or **“Financed Projects”** means, collectively and each respectively, (a) the Galleria Project and (b) any other facilities, buildings, structures, improvements, expansions, additions, replacements, renovations, related lands, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), and any other multi-use coliseum and civic center type facilities of the type described in the Authority Act, in each case if and to the extent acquired, constructed, rehabilitated or installed by or on behalf of the Authority after September 1, 2023 and financed in whole or in part by Senior Lien Bonds, provided, however, that all such facilities acquired, constructed or installed after May 8, 2018 must be managed and operated directly by the Authority for its own use on behalf of the citizens of the County.

“Fiscal Year” means the fiscal year for the Authority ending September 30 of each year or such fiscal year as may be changed by appropriate proceedings of the Authority.

“Funding Agreement” means the Amended and Restated Galleria Convention Funding Agreement, dated as of ~~October 1, 2023~~ [the Effective Date](#), by and between the Authority and the City, as the same may be supplemented or amended from time to time.

“funds derived from County/Cities Tax Payments” or any similar or comparable phrase shall include, without limitation, net investment earnings on County/Cities Tax Payments, except only during the Gap Period net investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund rather than the Tax Payments Fund shall be excluded.

“Future Galleria Project” means any future Financed Project consisting of improvements of, additions to or expansions of the Existing Galleria Project after September 1, 2023, which may include, without limitation, related lands, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed directly by the Authority for its own use for the benefit of the citizens of the County.

“Galleria Project” means, collectively, the Existing Galleria Project and any Future Galleria Project.

“Gap Period” means the period of time commencing on September 1, 2023 and ending, as applicable, (a) with respect to any Original City Funding Agreement and Original City Operating Agreement, on the date such Cities and the Authority have executed a Conforming City Funding Agreement and a Conforming City Operating Agreement and (b) on the termination date of an Original City Funding Agreement and Original City Operating Agreement in the event the same are never amended or amended and restated or otherwise modified after September 1, 2023.

~~10.09.23 DRAFT~~ EXECUTION COPY

AMENDED AND RESTATED GALLERIA CONVENTION FUNDING AGREEMENT

between

COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY

and

CITY OF SMYRNA, GEORGIA

DATED AS OF THE EFFECTIVE DATE

[Original Convention Funding Agreement dated as of December 1, 1991
and amended as of October 1, 1996]

“funds derived from County/Cities Tax Payments” or any similar or comparable phrase shall include, without limitation, net investment earnings on County/Cities Tax Payments, except only during the Gap Period net investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund rather than the Tax Payments Fund shall be excluded.

“Future Galleria Project” means any future Financed Project consisting of improvements of, additions to or expansions of the Existing Galleria Project after September 1, 2023, which may include, without limitation, related lands, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed directly by the Authority for its own use for the benefit of the citizens of the County.

“Galleria Project” means, collectively, the Existing Galleria Project and any Future Galleria Project.

“Gap Period” means the period of time commencing on September 1, 2023 and ending, as applicable, (a) with respect to any Original City Funding Agreement and Original City Operating Agreement, on the date any such Cities and the Authority have executed a Conforming City Funding Agreement and a Conforming City Operating Agreement and (b) on the termination date of an Original City Funding Agreement and Original City Operating Agreement in the event the same are never amended or amended and restated or otherwise modified after September 1, 2023.

“Hotel/Motel Tax Law” means O.C.G.A. Title 48, Chapter 13, Article 3 *et seq.*, as amended, including in particular, without limitation, O.C.G.A. § 48-13-51(a)(5.1), authorizing the governing authority of each county within the State, within the territorial limits of the special district (created under O.C.G.A. § 48-13-51) and each municipality in the State located within the special district, to levy and collect an excise tax upon the furnishing of public accommodations at the applicable rate or rates specified therein.

“Liquor-by-the-Drink Tax” means the excise tax levied and collected by the County upon the sale of distilled spirits by-the drink pursuant to O.C.G.A. Title 3, Chapter 4, Article 5, Part 3, *et seq.*, as amended.

“O.C.G.A.” means the Official Code of Georgia Annotated, as amended.

“Operating Agreement” means the Amended and Restated Galleria Operating Agreement, dated as of ~~October 1, 2023~~ [the Effective Date](#), by and between the Authority and the City, as the same may be supplemented or amended from time to time.

“Operating Revenue Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Operating Revenue Fund created pursuant to and governed by Section 4.1 of the Operating Agreement.

“Original City Funding Agreement” and **“Original City Funding Agreements”** means, each respectively and all collectively, the City Convention Funding Agreements, dated December 1, 1991, between the Authority and each of the Cities, entered into in connection with the issuance of the Series 1991 Bonds, as amended from time to time and in effect as of September 1, 2023.

“Original City Operating Agreement” and **“Original City Operating Agreements”** means, each respectively and all collectively, the Operating Agreements, dated December 1, 1991, between the

EXECUTION COPY

AMENDED AND RESTATED GALLERIA CONVENTION FUNDING AGREEMENT

between

COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY

and

CITY OF SMYRNA, GEORGIA

DATED AS OF THE EFFECTIVE DATE

[Original Convention Funding Agreement dated as of December 1, 1991
and amended as of October 1, 1996]

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AMENDED AND RESTATED GALLERIA CONVENTION FUNDING AGREEMENT

THIS AMENDED AND RESTATED GALLERIA CONVENTION FUNDING AGREEMENT (this “**Agreement**”) is dated as of the Effective Date (as defined herein), by and between the **COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY**, a body corporate and politic created and existing under the laws of the State of Georgia (the “**State**”), and the **CITY OF SMYRNA, GEORGIA**, a municipal corporation created and existing under the laws of the State, and amends and restates in its entirety the Prior Funding Agreement (as defined herein).

WHEREAS, the Authority (as defined herein) has heretofore been created pursuant to the Cobb-Marietta Coliseum and Exhibit Hall Authority Act (Georgia Laws 1980 p. 4091 et seq., as amended, the “**Authority Act**”) and the Authority is now existing and operating and its members have been duly appointed and entered into their duties;

WHEREAS, the Authority was created for the general purpose of “. . . developing and promoting for the public good in this state the cultural growth, public welfare, education and recreation of the people of this state, including the erection and construction of a building or buildings which shall be public buildings to be used for amusement purposes or educational purposes or a combination of the two, and for fairs, expositions, or exhibitions in connection therewith, and the purchase of lands, easements, rights and lands and franchises for construction of such facility or facilities and for use in connection therewith . . .”;

WHEREAS, pursuant to the authority granted in the Authority Act, the Authority is empowered to undertake, without limitation, “. . . the acquisition, construction, equipping, maintenance and operation of multi-use coliseum and civic center type facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions and other public entertainments, which facilities if acquired or constructed after May 8, 2018 must be managed and operated directly by the Authority for its own use, and the usual facilities related thereto, including, without limitation, refreshment stands and restaurants, and facilities for the purveying of foods, beverages, publications, souvenirs, novelties, and goods of all kinds, whether operated or purveyed directly or indirectly through concessions, licenses, leases or otherwise, parking facilities or parking areas in connection therewith, recreational centers and areas including, but not limited to, gymnasium and athletic facilities and related buildings, and the usual and convenient facilities appertaining to such undertakings and the extension and improvements of such facilities, acquiring the necessary property therefor, both real and personal and the lease, sale and licensing of any part or all of such facilities, including real and personal property, to any persons, firms or corporations whether public or private so as to assure the efficient and proper development, maintenance, and operation of such facilities and areas, deemed by the Authority to be necessary, convenient, or desirable . . .”;

WHEREAS, the City (as defined herein) is a municipal corporation organized and existing under the laws of the State;

WHEREAS, Article IX, Section II, Paragraph III of the Constitution of the State (the “**State Constitution**”) authorizes the expenditure of public funds by counties and municipal corporations for parks, recreational areas, programs and facilities;

WHEREAS, Article IX, Section III, Paragraph I of the State Constitution (the “**Intergovernmental Contracts Clause**”) authorizes intergovernmental contracts between any “. . . county, municipality, school district or political subdivision of the state . . . with each other or any other public agency, public corporation, or public authority for joint services, for the provision of services or for joint or separate use of facilities or equipment. . .”;

WHEREAS, pursuant to the Authority Act, the Intergovernmental Contracts Clause of the State Constitution and other applicable provisions of State law, the Authority and the City entered into the Original Funding Agreement (as defined herein) as an intergovernmental contract for the provision of services and facilities in connection with the Galleria Project (defined below);

WHEREAS, the City is authorized to levy and collect within its boundaries, an excise tax upon the furnishing for value of public accommodations (the “**Hotel/Motel Tax**”) pursuant to the Hotel/Motel Tax Law (as defined herein), which Hotel/Motel Tax on the Effective Date is levied by the City at the rate of eight percent (8%) of the amount of the lodging charges actually collected;

WHEREAS, O.C.G.A. § 36-82-60 et seq. (the “**Revenue Bond Law**”) and in particular O.C.G.A. § 36-82-61(4)(e) authorizes the issuance of revenue bonds by governmental bodies for “. . . buildings to be constructed and used for the housing of exhibits for fairs and educational purposes; buildings to be used for the housing of livestock, horses, cattle, swine, poultry and agricultural exhibits for exhibition purposes; the erection and construction of buildings to be used for amusement or educational purposes or a combination of the two; and such buildings to be used for fairs, expositions, or exhibitions in connection therewith . . .”;

WHEREAS, on December 17, 1991, the Authority issued \$48,200,000 original aggregate principal amount of its Revenue Bonds, Series 1991 (the “**Series 1991 Bonds**”) pursuant to the Senior Lien Indenture (as defined hereinafter) in order to finance the acquisition and construction of that certain multi-use civic center, exhibit hall and meeting facilities known as “Cobb Galleria Centre” as a public facility to be owned and operated by the Authority, all for the benefit of the residents within the boundaries of the County (as defined herein);

WHEREAS, in order to secure payment of the Series 1991 Bonds and any additional bonds issued under the Senior Lien Indenture, the Authority pledged all revenues derived under the Original Funding Agreement to the payment of principal of and interest on the Senior Lien Bonds (as defined herein);

WHEREAS, in connection with the Original Funding Agreement and the issuance of the Series 1991 Bonds issued to finance the acquisition and construction of the Galleria Project, the Authority and the City entered into the Original Operating Agreement (as defined herein) with respect to the original Galleria Project;

WHEREAS, on May 18, 1993, the Authority issued \$47,965,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 1993 (the “**Series 1993 Bonds**”) in order to refund a portion of the Series 1991 Bonds;

WHEREAS, in order to finance certain additions to the Galleria Project, the Authority issued \$22,300,000 original aggregate principal amount of its Junior Lien Revenue Bonds, Series 1996A (the “**Series 1996A Junior Lien Bonds**”) on October 15, 1996 in accordance with the 1996 Funding Agreement Amendment and the 1996 Operating Agreement Amendment (both as defined herein);

WHEREAS, on October 19, 1999, the Authority issued \$23,950,000 original aggregate principal amount of its Revenue Bonds, Series 1999 (the “**Series 1999 Bonds**”) in order to finance the construction of an expansion of the Galleria Project;

WHEREAS, on March 15, 2005, the Authority issued \$15,375,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 2005 (the “**Series 2005 Bonds**”) in order to refund a portion of the outstanding Series 1999 Bonds;

WHEREAS, on December 3, 2009, the Authority issued \$14,335,000 original aggregate principal amount of its Junior Lien Revenue Refunding Bonds, Series 2009 (the “**Series 2009 Junior Lien Bonds**”) pursuant to the Trust Indenture and Security Agreement dated as of October 1, 2009 (the “**Junior Lien Indenture**”), by and between the Authority and U.S. Bank Trust Company, National Association, as successor trustee (the “**Junior Lien Trustee**”) in order to refund all of the Authority’s then outstanding Series 1996A Junior Lien Bonds;

WHEREAS, as of September 1, 2023, the Authority’s outstanding \$12,720,000 aggregate principal amount of Series 1993 Senior Lien Bonds and its outstanding \$6,175,000 aggregate principal amount of Series 2005 Senior Lien Bonds, which together totaled \$18,895,000 (collectively, the “**Existing Senior Lien Bonds**”), were the Authority’s only outstanding Senior Lien Bonds, and have a final maturity date of October 1, 2026;

WHEREAS, all previously outstanding Series 2009 Junior Lien Bonds were paid in full and the Junior Lien Trustee discharged the Junior Lien Indenture on or about July 11, 2023;

WHEREAS, pursuant to its terms, the Prior Funding Agreement will expire on October 2, 2028, or if on such date all bonds secured thereby have not been paid in full, then on the date all bonds secured thereby have been paid in full, but in no event in excess of fifty years after December 1, 1991;

WHEREAS, pursuant to House Bill 658 of the 2017-2018 General Session of the State General Assembly (“**HB 658**”), which became effective as of July 1, 2018, the expiration of the period of time during which the Hotel/Motel Tax may be levied and collected in the City was extended from not later than December 31, 2028 to not later than December 31, 2053;

WHEREAS, pursuant to Senate Bill 489 of the 2017-2018 General Session of the State General Assembly (“**SB 489**”), which became effective as of May 8, 2018, the Authority Act was amended to limit the types of facilities to be financed by the Authority’s revenue bonds after May 8, 2018 to those facilities that are operated and managed directly by the Authority for its own use;

WHEREAS, the parties acknowledge that certain relevant circumstances of the Authority and certain of the Cities have changed since the effective date of the Original Funding Agreement and that the Authority desires to issue additional bonds in the future to be secured in whole or in part by the pledge of the City’s payments of 62.5% of its Hotel/Motel Tax revenues to or for the account of the Authority pursuant to this Agreement;

WHEREAS, the Senior Lien Indenture requires the consent of the Senior Lien Trustee to an amendment of the Prior Funding Agreement and allows the Senior Lien Trustee to consent to any amendment, change or modification, among other purposes, as may be required in connection with additional bonds in accordance with the terms thereof or in connection with any other change therein that does not prejudice the interests of the Senior Lien Trustee or the Bondholders (as defined herein);

WHEREAS, the Senior Lien Trustee has consented to this Agreement; and

NOW, THEREFORE, the Authority and the City have agreed to enter this Agreement in order to amend and restate the Prior Funding Agreement in its entirety and have agreed to contemporaneously enter into the Operating Agreement (as defined herein) in order to amend and restate the Prior Operating Agreement (as defined herein) in its entirety.

IN CONSIDERATION OF Ten Dollars in hand paid, the respective covenants, representations and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency

of which are hereby acknowledged by each party hereto, the Authority and the City agree as follows, including, without limitation, that the foregoing premises and Whereas paragraphs shall be, and are hereby declared to be, substantive provisions of this Agreement:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of the words and terms herein defined and (b) all capitalized terms and phrases used herein, but not defined herein, shall have the meanings assigned thereto under the Operating Agreement:

“1996 Funding Agreement Amendment” means the Amendment No. One to Convention Funding Agreement, dated as of October 1, 1996, between the Authority and the City amending the Original Funding Agreement.

“1996 Operating Agreement Amendment” means the Amendment No. One to Operating Agreement, dated as of October 1, 1996, between the Authority and the City amending the Original Operating Agreement.

“Additional Senior Lien Bonds” means Senior Lien Bonds or any other form of senior lien financing or refinancing or refunding payable from or secured by, in whole or in part, directly or indirectly, any Cities Hotel/Motel Tax Payments or funds derived directly or indirectly from or in connection with Cities Hotel/Motel Tax Payments payable under or in connection with this Agreement (including, without limitation, any such financing pursuant to a financing plan not involving bonds per se), issued or entered into by the Authority after September 1, 2023.

“Authority” means the Cobb-Marietta Coliseum and Exhibit Hall Authority, a body corporate and politic created and existing under the laws of the State, and its successors and assigns.

“Authority Bond Documents” means, collectively, this Agreement, the Operating Agreement, the Senior Lien Indenture and all other Bond Financing Documents to which the Authority is or will be a party or is or will be bound or subject, and all amendments or supplements to any such document.

“Bond Financing Documents” means, collectively, this Agreement, the Senior Lien Indenture and any other document evidencing, governing or securing repayment of Senior Lien Bonds or necessary or appropriate in connection with the issuance and sale of Additional Senior Lien Bonds, including, but not limited to, disclosure documents, validation documents and any bond insurance policy.

“Bondholders” means the registered owner of any outstanding Senior Lien Bonds.

“Business Day” means any day, other than a Saturday or Sunday, on which banking institutions are open on a full-service business basis in the city in which the designated corporate trust office of the Senior Lien Trustee is located and on which the payment system of the United States Federal Reserve is operational.

“Cities” means, each respectively and all collectively, the City and the cities of Acworth, Austell, Kennesaw, Marietta, and Powder Springs, unless otherwise expressly provided herein, together with any other city located in the boundaries of the County that enters into a City Funding Agreement and a City

Operating Agreement with the Authority, unless otherwise expressly provided herein, in each case for so long as any such city has a City Funding Agreement and a City Operating Agreement with the Authority in effect at the applicable time.

“Cities Hotel/Motel Tax Payments” means, collectively, the payments of Hotel/Motel Tax revenues paid by each of the Cities to or for the account of the Authority under the applicable City Funding Agreement, including the City’s payments of Hotel/Motel Tax revenues required pursuant to Section 4.4(a) hereof with respect to the Existing Senior Lien Bonds and the Additional Senior Lien Bonds prior to the Transition Date or required pursuant to Section 4.4(b) hereof with respect to the Additional Senior Lien Bonds on and after the Transition Date.

“City” means the City of Smyrna, Georgia, a municipal corporation created and existing under the laws of the State, and its successors and assigns.

“City Funding Agreement” means, each respectively and as applicable all collectively, (a) the Original City Funding Agreements in effect at the applicable time, (b) this Agreement, and (c) the convention funding agreements by and between the Authority and each of the cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs, unless otherwise expressly provided herein, together with each similar convention funding agreement between the Authority and a city located in the boundaries of the County entered into after September 1, 2023, as the same may be supplemented or amended from time to time.

“City Operating Agreement” means, each respectively and all collectively, (a) the Original City Operating Agreements in effect at the applicable time, (b) the Operating Agreement, and (c) the operating agreements by and between the Authority and each the cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs, unless otherwise expressly provided herein, together with each similar operating agreement between the Authority and a city located in the boundaries of the County entered into after September 1, 2023, as the same may be supplemented or amended from time to time.

“Conforming City” means, each respectively and collectively, as applicable, each of the Cities that has entered into a Conforming City Funding Agreement and a Conforming City Operating Agreement with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement, which may include a new city located in the boundaries of the County.

“Conforming City Funding Agreement” means, each respectively and collectively, as applicable, a City Funding Agreement between a Conforming City and the Authority (regardless of its title and regardless of whether it is amended or amended and restated) with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement with respect to the extended Term, the percent of Hotel/Motel Tax revenues pledged to secure Additional Senior Lien Bonds, the payment and application of Cities Hotel/Motel Tax Payments, the flow of funds for Cities Hotel/Motel Tax Payments and County Hotel/Motel Tax Payments, the flow of funds for Project Operating Revenues, and the flow of funds for the Renewal and Expansion Fund.

“Conforming City Operating Agreement” means, each respectively and collectively, as applicable, a City Operating Agreement between a Conforming City and the Authority (regardless of its title and regardless of whether it is amended or amended and restated) with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement with respect to the extended Term, the percent of Hotel/Motel Tax revenues pledged to secure Additional Senior Lien Bonds, the payment and application of Cities Hotel/Motel Tax Payments collections, the flow of funds for Cities Hotel/Motel Tax Payments and County Hotel/Motel Tax Payments, the flow of funds for Project Operating Revenues, and the flow of funds for the Renewal and Expansion Fund.

“**County**” means Cobb County, Georgia, a political subdivision of the State.

“**County Funding Agreement**” means the Amended and Restated Galleria Convention Funding Agreement, dated as of September 1, 2023, between the County and the Authority, as the same may be supplemented or amended from time to time.

“**County Hotel/Motel Tax Payments**” means the payments of Hotel/Motel Tax revenues paid by the County to or on behalf of the Authority pursuant to the County Funding Agreement.

“**County Operating Agreement**” means the Amended and Restated Galleria Operating Agreement, dated as of September 1, 2023, between the County and the Authority, as the same may be supplemented or amended from time to time.

“**County Tax Payments**” means the County’s payments of its Hotel/Motel Tax revenues and the County’s payments of its Liquor-by-the-Drink Tax revenues required pursuant to Section 4.4 of the County Funding Agreement.

“**County/Cities Tax Payments**” means, collectively, all County Tax Payments and all Cities Hotel/Motel Tax Payments.

“**Debt Service Reserve Account**” means the Debt Service Reserve Account within the Sinking Fund established under the Senior Lien Indenture and held and administered by the Senior Lien Trustee in accordance with the Senior Lien Indenture or any comparable debt service reserve fund under any successor to the Senior Lien Indenture pursuant to which Additional Senior Lien Bonds are issued after September 1, 2023.

“**Effective Date**” means October 1, 2023.

“**Existing Galleria Project**” means the multipurpose convention, exhibit hall and meeting facilities commonly referred to as the Cobb Galleria Centre, any associated parking areas or improvements thereto and all other facilities and improvements determined by the Authority to be necessary or convenient in connection with the Cobb Galleria Centre, which may include, without limitation, related lands, air space, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed for the benefit of the citizens of the County, as the same exists on September 1, 2023.

“**Financed Project**” or “**Financed Projects**” means, collectively and each respectively, (a) the Galleria Project and (b) any other facilities, buildings, structures, improvements, expansions, additions, replacements, renovations, related lands, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), and any other multi-use coliseum and civic center type facilities of the type described in the Authority Act, in each case if and to the extent acquired, constructed, rehabilitated or installed by or on behalf of the Authority after September 1, 2023 and financed in whole or in part by Senior Lien Bonds, *provided, however*, that all such facilities acquired, constructed or installed after May 8, 2018 must be managed and operated directly by the Authority for its own use on behalf of the citizens of the County.

“**funds derived from County/Cities Tax Payments**” or any similar or comparable phrase shall include, without limitation, net investment earnings on County/Cities Tax Payments, except only during the Gap Period net investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund rather than the Tax Payments Fund shall be excluded.

“Future Galleria Project” means any future Financed Project consisting of improvements of, additions to or expansions of the Existing Galleria Project after September 1, 2023, which may include, without limitation, related lands, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed directly by the Authority for its own use for the benefit of the citizens of the County.

“Galleria Project” means, collectively, the Existing Galleria Project and any Future Galleria Project.

“Gap Period” means the period of time commencing on September 1, 2023 and ending, as applicable, (a) with respect to any Original City Funding Agreement and Original City Operating Agreement, on the date any such Cities and the Authority have executed a Conforming City Funding Agreement and a Conforming City Operating Agreement and (b) on the termination date of an Original City Funding Agreement and Original City Operating Agreement in the event the same are never amended or amended and restated or otherwise modified after September 1, 2023.

“Hotel/Motel Tax Law” means O.C.G.A. Title 48, Chapter 13, Article 3 *et seq.*, as amended, including in particular, without limitation, O.C.G.A. § 48-13-51(a)(5.1), authorizing the governing authority of each county within the State, within the territorial limits of the special district (created under O.C.G.A. § 48-13-51) and each municipality in the State located within the special district, to levy and collect an excise tax upon the furnishing of public accommodations at the applicable rate or rates specified therein.

“Liquor-by-the-Drink Tax” means the excise tax levied and collected by the County upon the sale of distilled spirits by-the drink pursuant to O.C.G.A. Title 3, Chapter 4, Article 5, Part 3, *et seq.*, as amended.

“O.C.G.A.” means the Official Code of Georgia Annotated, as amended.

“Operating Agreement” means the Amended and Restated Galleria Operating Agreement, dated as of the Effective Date, by and between the Authority and the City, as the same may be supplemented or amended from time to time.

“Operating Revenue Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Operating Revenue Fund created pursuant to and governed by Section 4.1 of the Operating Agreement.

“Original City Funding Agreement” and **“Original City Funding Agreements”** means, each respectively and all collectively, the City Convention Funding Agreements, dated December 1, 1991, between the Authority and each of the Cities, entered into in connection with the issuance of the Series 1991 Bonds, as amended from time to time and in effect as of September 1, 2023.

“Original City Operating Agreement” and **“Original City Operating Agreements”** means, each respectively and all collectively, the Operating Agreements, dated December 1, 1991, between the Authority and each of the Cities, entered into in connection with the issuance of the Series 1991 Bonds, as amended from time to time and in effect as of September 1, 2023.

“Original Funding Agreement” means the Convention Funding Agreement, dated as of December 1, 1991, between the Authority and the City, with respect to the original Galleria Project.

“Original Operating Agreement” means the Operating Agreement, dated as of December 1, 1991, between the Authority and the City, with respect to the original Galleria Project.

“Prior Funding Agreement” means the Original Funding Agreement, as amended by the 1996 Funding Agreement Amendment.

“Prior Operating Agreement” means the Original Operating Agreement, as amended by the 1996 Operating Agreement Amendment.

“Project” or **“Projects”** means, collectively and each respectively, the Galleria Project, any other Financed Project existing on September 1, 2023, and any future Financed Project undertaken in accordance with this Agreement and the Operating Agreement.

“Project Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority Project Fund created under and governed by the Senior Lien Indenture.

“Project Operating Revenues” means in the aggregate with respect to all Projects under this Agreement any and all gross revenues, receipts, income, rent, concessions and other money of any nature or in any form whatsoever received by or on behalf of the Authority or accruing to the benefit of the Authority from or in connection with the Galleria Project or any other Financed Project, including, without limitation, revenues from any ground lease, rental agreement, user or occupancy agreement, operating agreement, license or concession agreement, franchise agreement, or any similar or comparable type agreement or arrangement, lease or sale of air rights, any sale, lease or other disposition of naming rights and/or signage rights, or any other lease, sale or disposition of property or assets or any kind, any investment earnings on any of the foregoing revenues and during the Gap Period any investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund, but excluding all County/Cities Tax Payments from the County or any of the Cities, all net investment earnings on County/Cities Tax Payments deposited into the Tax Payments Fund and all other funds derived from County/Cities Tax Payments.

“Renewal and Expansion Fund” or **“R&E Fund”** means the Renewal and Expansion Fund created pursuant to and governed by Section 4.3 of the Operating Agreement, together with any other reserve funds established by the Authority during the Term of the Operating Agreement serving a comparable purpose as the R&E Fund regardless of how such other reserve fund is labeled or characterized (excluding any debt service reserve funds for Senior Lien Bonds held by the Senior Lien Trustee under the Senior Lien Indenture or under a similar Bond Financing Document, excluding the Project Working Capital Reserve and excluding the reserve funds and renewal and expansion funds established exclusively for other Authority projects such as the Performing Arts Center).

“Revenue Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority Revenue Fund created under and governed by the Senior Lien Indenture.

“Senior Lien Bonds” means, collectively, the Existing Senior Lien Bonds and any Additional Senior Lien Bonds, which are secured under the Senior Lien Indenture by a senior priority pledge of and lien on the County/Cities Tax Payments.

“Senior Lien Indenture” means the Trust Indenture dated as of November 1, 1991, by and between the Authority and U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association, as trustee, and as successor to First Union National Bank of Georgia, as trustee, pursuant to which the Senior Lien Bonds have been issued, as supplemented and amended by the First Supplemental Indenture, dated as of April 1, 1993, the Second Supplemental Indenture, dated as of October 1, 1999, and

the Third Supplemental Indenture, dated as of February 1, 2005, as the same may be further amended or supplemented or replaced by a successor document from time to time hereafter.

“**Senior Lien Trustee**” means U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association and First Union National Bank of Georgia, each respectively, as trustee, or any successor trustee appointed pursuant to the terms of the Senior Lien Indenture.

“**Tax Payments Fund**” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Tax Payments Fund created pursuant to and governed by Section 4.2 of the Operating Agreement.

“**Term**” means the term of this Agreement set forth in Section 4.1 hereof.

“**Transition Date**” means the first date on which no Existing Senior Lien Bonds remain outstanding, which date as of September 1, 2023 is expected to be October 2, 2026.

ARTICLE II

REPRESENTATIONS

Section 2.1 **Representations by the Authority.** The Authority makes the following representations and agreements as the basis for the undertakings on its part herein contained:

(i) The Authority is a body corporate and politic created and existing under the laws of the State, including in particular the Authority Act and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence; the Authority is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the City for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The Authority has the power to enter into this Agreement and to perform all obligations contained herein, is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, by proper action has duly authorized the execution, delivery and performance of this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained prior to or as of the Effective Date hereof;

(iii) The Authority is empowered specifically (a) to borrow money and to issue its revenue bonds and to use the proceeds thereof for the purpose of paying all or part of the cost of any “project” as defined in the Authority Act as of the time of such issuance or for the purpose of refunding any such bonds of the Authority theretofore issued, and to otherwise carry out its purposes, and to pay all costs of the Authority incident to or necessary and appropriate to such purposes, (b) to make and execute contracts and other instruments necessary to exercise the powers of the Authority, including, without limitation, contracts with the City, and (c) to pledge or assign any properties, revenues, income, tolls, charges, or fees owned or received by the Authority;

(iv) The Authority is not subject to any bylaw or contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts, or prevents it from entering into this Agreement and performing its obligations hereunder;

(v) The issuance and sale of the Senior Lien Bonds, the execution and delivery of this Agreement, the Senior Lien Indenture and all other Authority Bond Documents, and the performance of all covenants and agreements of the Authority contained in this Agreement and the other Authority Bond Documents and of all other acts and things required under the State Constitution and laws of the State to make this Agreement and each other Authority Bond Document a valid and binding obligation of the Authority in accordance with its respective terms are authorized by law and have been (or will be as to Authority Bond Documents with respect to Additional Senior Lien Bonds) duly authorized by proceedings of the Authority adopted at public meetings thereof duly and lawfully called and held;

(vi) This Agreement, the Senior Lien Indenture and the other Authority Bond Documents have been or will be duly executed and delivered by the Authority and do or will constitute its legal, valid, and binding obligation enforceable in accordance with their respective terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(vii) The authorization, execution, delivery, and performance by the Authority of this Agreement, the Senior Lien Indenture and the other Authority Bond Documents and compliance by the Authority with the respective provisions hereof and thereof do not and will not violate the State Constitution or the laws of the State or constitute a breach of or a default under, any other law, court order, administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound or subject; and

(viii) There is no litigation or proceeding pending, or to the knowledge of the Authority threatened, against the Authority or against any person having a material adverse effect on the right of the Authority to execute this Agreement, the Operating Agreement, the Senior Lien Indenture or the other Authority Bond Documents or the ability of the Authority to comply with any of its obligations under this Agreement, the Operating Agreement, the Senior Lien Indenture or the other Authority Bond Documents.

Section 2.2 Representations and Agreements by the City. The City makes the following representations and agreements:

(i) The City is a municipal corporation of the State duly created and existing under the laws of the State; the City is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the Authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The City has the power and authority to enter into and execute and deliver this Agreement, and, by proper action of its governing body, has authorized the execution and delivery of this Agreement and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained as of the Effective Date hereof;

(iii) This Agreement has been duly executed and delivered by the City and constitutes its legal, valid, and binding obligation enforceable in accordance with its terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(iv) The authorization, execution, delivery, and performance by the City of this Agreement and compliance by the City with the provisions thereof do not violate the State Constitution or the laws of the State relating to the City or constitute a breach of or a default under, any other law, court order,

administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound;

(v) There is no litigation or proceeding pending, or to the knowledge of the City threatened, against the City or any other person having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with any of its obligations under this Agreement; and

(vi) The City has, pursuant to resolutions and ordinances duly adopted by its governing body, authorized the levy and collection of its Hotel/Motel Tax, and certain revenues derived from such levy shall be used and applied as provided in this Agreement and the Operating Agreement during the Term of this Agreement.

ARTICLE III

ISSUANCE OF SENIOR LIEN BONDS; CONSTRUCTION AND OPERATION OF FINANCED PROJECTS

Section 3.1 Compliance with the Senior Lien Indenture and Other Authority Bond Documents. The Authority hereby represents that the proceeds from the sale of each issue of Bonds deposited into the Project Fund under the Senior Lien Indenture prior to the Effective Date were disbursed for the purposes and in accordance with the terms and conditions set forth therein and that the Authority has and will continue to comply with the terms of all of the Authority Bond Documents. In the event the Authority issues “new money” Additional Senior Lien Bonds after the Effective Date, the Authority shall deposit the applicable net proceeds derived from the sale of each such issue of Additional Senior Lien Bonds into a separate account of the Project Fund created under the Senior Lien Indenture and shall disburse such Senior Lien Bond proceeds in accordance with the terms and conditions set forth therein, and the Authority shall comply with the terms of all Authority Bond Documents entered into in connection with each such issue of Additional Senior Lien Bonds.

Section 3.2 Construction and Operation of the Galleria Project and any other Financed Project. The Authority hereby agrees during the Term hereof to design, construct, operate and maintain the Galleria Project and any other Financed Project for the purpose of developing and promoting for the public good, cultural growth, public welfare, education and recreation of the citizens of the County, including the erection and construction of the Galleria Project and any other Financed Project and the purchase of lands, easements, rights and lands, and franchises for the construction of the Galleria Project and any other Financed Project, all for the benefit of the citizens of the County. The Authority hereby agrees to acquire, construct, operate and maintain the Galleria Project and any other Financed Project, and to operate and manage any other Financed Project after the Effective Date directly for its own use, for the benefit of the citizens of the County and in accordance with the provisions of this Agreement and the Operating Agreement.

Section 3.3 Additional Senior Lien Bonds Proposed after the Effective Date. The City agrees that the Authority may issue Additional Senior Lien Bonds in accordance with the Senior Lien Indenture after the Effective Date without any further approval of the City and that such Additional Senior Lien Bonds shall be secured by the County/Cities Tax Payments to the same extent and in the same manner as the Senior Lien Bonds outstanding on the Effective Date; provided, however, no such Additional Senior Lien Bonds may mature later than October 1, 2053.

Section 3.4 Validation of Senior Lien Bonds The City hereby agrees to be a party defendant in connection with any validation proceeding conducted in connection with the issuance of such Additional Senior Lien Bonds proposed to be issued by the Authority after the Effective Date and agrees that it will

execute, acknowledge and deliver any certificates, instruments, sworn answers and acknowledgments as may be reasonably required in connection with any such validation hearing.

ARTICLE IV

EFFECTIVE DATE; TERM; IMPOSITION OF TAX; TAX PAYMENT PROVISIONS; OBLIGATIONS ABSOLUTE AND UNCONDITIONAL

Section 4.1 Effective Date and Term of Agreement. This Agreement shall be effective as of the Effective Date hereof. The Term of this Agreement shall commence on the Effective Date and shall expire and terminate on the date of the first to occur of the following: (i) the first date on which no Existing Senior Lien Bonds remain outstanding in the event no Additional Senior Lien Bonds have been issued in accordance with this Agreement and the Operating Agreement by September 30, 2026 or (ii) the first date on which no Additional Senior Lien Bonds remain outstanding, whether by full and final payment or by defeasance in accordance with the Senior Lien Indenture, which date shall be no later than the final maturity date of any Additional Senior Lien Bonds issued after the Effective Date hereof; provided, however, in no event shall the Term of this Agreement extend beyond October 1, 2053; and provided further, however, in no event shall the cumulative time period comprised of the sum of (i) the length of the time period from the Effective Date to the date of termination of the last surviving provision of this Agreement plus (ii) the length of the time period from the Effective Date to the final termination date of the Original Funding Agreement exceed fifty (50) years; and provided further, however, notwithstanding the foregoing, so long as any Senior Lien Bonds remain outstanding, the City shall not cease to levy its Hotel/Motel Tax in any matter that will impair the interest and rights of the holders of any Senior Lien Bonds.

Section 4.2 Imposition of Hotel/Motel Tax. Pursuant to the provisions of § 48-13-51(a)(5.1) of the Official Code of Georgia Annotated, as amended, the City has duly authorized the levy and collection of its Hotel/Motel Tax at the current rate of eight percent (8%) for the Term of this Agreement.

Section 4.3 No Impairment of Tax. So long as any Existing Senior Lien Bonds or any Additional Senior Lien Bonds issued in accordance with this Agreement remain outstanding, the City shall not cease to levy and collect, or reduce the rate of, its Hotel/Motel Tax in any manner that will impair the interest and rights of the owners of any Senior Lien Bonds then outstanding. Without limiting the generality of the foregoing, the City shall not impose, levy or collect any taxes within its corporate limits which would cause the thirteen percent (13%) limit contained in the Hotel/Motel Tax Law in O.C.G.A. § 48-13-51(a)(5.1)(C) to cause a reduction in the rate of its Hotel/Motel Tax. Additionally, in the event corporate limits of the City are hereafter expanded, the Hotel/Motel Tax attributable to such additional area included within the City shall be payable to the Authority on the same terms and conditions provided in Section 4.4 hereof, except that the amount payable due to the collection of its Hotel/Motel Tax within the additional areas included in the City shall equal 100 percent of such collections. The agreements by the City contained in this Section 4.3 shall be for the benefit of the Authority and for the benefit of the owners of the Existing Senior Lien Bonds and the owners of the Additional Senior Lien Bonds and shall constitute a contract with the owners of such Senior Lien Bonds.

Section 4.4 Cities Hotel/Motel Tax Payments.

(a) **Cities Hotel/Motel Tax Payments with Respect to Outstanding Existing Senior Lien Bonds and Additional Senior Lien Bonds Prior to the Transition Date.** Notwithstanding any provision of this Agreement or any Bond Financing Document to the contrary, commencing on the Effective Date and ending on the Transition Date, this Section 4.4(a) shall apply to the outstanding Existing Senior Lien Bonds and any Additional Senior Lien Bonds issued after the Effective Date, and this Section 4.4(a) shall be of no force and effect after the Transition Date.

(i) The City hereby covenants and agrees to pay to or for the account of the Authority by the 20th day of each calendar month until the principal of and interest on the Existing Senior Lien Bonds shall have been paid in full or provision duly made therefor, a sum equal to sixty-two and one-half percent (62.5%) of the Hotel/Motel Tax collected by the City (or to the extent that the corporate limits of the City are expanded, then one hundred percent (100%) of the Hotel/Motel Tax collected by the City within the expanded area as provided in Section 4.3) since the next preceding payment under this Section 4.4(a).

(ii) The Cities Hotel/Motel Tax Payments to be made by the City pursuant to the provisions of this Section 4.4(a) shall be made by the City directly to the Senior Lien Trustee for the account of the Authority under the Senior Lien Indenture so long as any Existing Senior Lien Bonds are outstanding under the Senior Lien Indenture. Such payments shall be in lawful money of the United States of America, shall be forthwith deposited into the Revenue Fund created under the Senior Lien Indenture, shall be applied to the extent and in the manner provided thereunder, including, but not limited to, the payment of principal and interest on any Senior Lien Bonds and at least fifty percent (50%) of the total Hotel-Motel Tax collected at the rate of eight percent (8%) shall be expended for the purposes specified in O.C.G.A. § 48-13-51(a)(5.1(B) including, but not limited to, the payment of principal and interest on any Senior Lien Bonds.

(iii) The Cities Hotel/Motel Tax Payments to be made by the City under this Section 4.4(a) shall be pledged to the payment of principal and interest on the Senior Lien Bonds pursuant to the Senior Lien Indenture.

(iv) It is further expressly provided that the City or the Authority also may make additional payments from time to time from any lawfully available funds as determined by such party in its sole discretion to be necessary or desirable in connection with the Project.

(b) Cities Hotel/Motel Tax Payments with Respect to Additional Senior Lien Bonds on and after the Transition Date. Notwithstanding any provision of this Agreement or any Bond Financing Document to the contrary, this Section 4.4(b) shall apply on and after the Transition Date to all Additional Senior Lien Bonds issued after the Effective Date.

(i) The City hereby covenants to pay to the Senior Lien Trustee for the account of the Authority under the Senior Lien Indenture by the 20th day of each calendar month until the principal of and interest on the Additional Senior Lien Bonds issued after the Effective Date hereof shall have been paid in full or provision duly made therefor, a sum equal to sixty-two and one-half percent (62.5%) of the Hotel/Motel Tax collected by the City (or to the extent that the corporate limits of the City are expanded, then one hundred percent (100%) of the Hotel/Motel Tax collected by the City within the expanded area as provided in Section 4.3) since the next preceding payment under this Section 4.4(b).

(ii) The Cities Hotel/Motel Tax Payments to be made by the City pursuant to the provisions of this Section 4.4(b) shall be made by the City to the Senior Lien Trustee for the account of the Authority under the Senior Lien Indenture so long as any Additional Senior Lien Bonds are outstanding under the Senior Lien Indenture. Such payments shall be in lawful money of the United States of America, shall be forthwith deposited into the Revenue Fund under the Senior Lien Indenture and promptly each month (1) on a first priority basis the applicable monthly installment amount of principal and interest shall be applied or held by the Senior Lien Trustee for application when due to the payment of principal of and interest on the Additional Senior Lien Bonds pursuant to the Senior Lien Indenture and the applicable monthly installment amount to replenish any deficiency in the Debt Service Reserve Account below the Debt Service Reserve Fund Requirement

under the Senior Lien Indenture and (2) any Cities Hotel/Motel Tax Payments in excess of amounts needed for the aforesaid purposes of clause (1) shall be returned to the Authority promptly each month to be applied by the Authority strictly as provided in the Operating Agreement.

(iii) The Cities Hotel/Motel Tax Payments to be made by the City under this Section shall be pledged to the payment of principal of and interest on the Additional Senior Lien Bonds pursuant to the Senior Lien Indenture and to replenish any deficiency in the Debt Service Reserve Account below the Debt Service Reserve Fund Requirement under the Senior Lien Indenture.

(iv) It is further expressly provided that the City or the Authority also may make additional payments from time to time from any legally and contractually available funds as determined by such party to be necessary or desirable in connection with the applicable Additional Senior Lien Bonds or the applicable Project.

Section 4.5 Obligations of City Hereunder Absolute and Unconditional. The obligations of the City to make the payments required in Section 4.4 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim it may otherwise have against the Authority. Until such time as the principal of and interest on the Senior Lien Bonds outstanding under the Senior Lien Indenture shall have been paid in full or provision for the payment thereof shall have been made in accordance with the applicable Indenture, the City (i) will not suspend, abate, reduce, abrogate, diminish, postpone, modify or discontinue the Cities Hotel/Motel Tax Payments provided for herein, (ii) will perform and observe all of its other agreements contained in this Agreement, and (iii) will not terminate the Term of this Agreement or its obligations hereunder for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Authority's title in and to a Project or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to a Project, the taking by eminent domain of title to or the use of all or any part of a Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, any declaration or finding that any of the Senior Lien Bonds are unenforceable or invalid, the invalidity of any provision of this Agreement, 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 Agreement or the Senior Lien Indenture.

Nothing contained in this Section 4.5, however, shall be construed to release the Authority from the performance of any of the agreements on its part contained in this Agreement or in the Senior Lien Indenture; and if the Authority should fail to perform any such agreement, the City may institute such action against the Authority as the City may deem necessary to compel performance or recover its damages for nonperformance as long as such action shall not do violence to or adversely affect the agreements on the part of the City contained in this Agreement and to make the Cities Hotel/Motel Tax Payments specified herein; *provided, however*, any liability of the Authority commencing on the Effective Date hereof shall be payable solely from rents, revenues and receipts arising from the Authority's interest in the Projects. The City may, however, at its own cost and expense and in its own name, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Authority hereby agrees to cooperate to the full extent required so long as the Authority's interests in a Project would not be adversely affected.

Section 4.6 Pledge of Hotel/Motel Tax.

(a) With respect to Existing Senior Lien Bonds outstanding on the Effective Date hereof, the City has pledged and hereby reaffirms its pledge of its Cities Hotel/Motel Tax Payments required by

Section 4.4(a) hereof to the payment of principal of and interest on the Existing Senior Lien Bonds pursuant to the Senior Lien Indenture and to replenish any deficiency in the Debt Service Reserve Account below the Debt Service Reserve Fund Requirement under the Senior Lien Indenture for the benefit of the owners of the Existing Senior Lien Bonds. The Cities Hotel/Motel Tax Payments so pledged shall immediately be subject to the lien of such pledge without physical delivery thereof and the lien of this pledge shall be a first or prior lien superior to any and all other claims, whether such claims arise in contract, tort or otherwise and shall be superior to any lien or pledge that may hereafter be created.

(b) With respect to Additional Senior Lien Bonds issued after the Effective Date hereof in accordance with this Agreement, the City hereby pledges its Cities Hotel/Motel Tax Payments required to be paid pursuant to Section 4.4(a) prior to the Transition Date and Section 4.4(b) hereof on and after the Transition Date to the payment of principal of and interest on the Additional Senior Lien Bonds pursuant to the Senior Lien Indenture and to replenish any deficiency in the Debt Service Reserve Account below the Debt Service Reserve Fund Requirement under the Senior Lien Indenture for the benefit of the owners of the applicable Additional Senior Lien Bonds issued after the Effective Date hereof. The Cities Hotel/Motel Tax Payments so pledged shall immediately be subject to the lien of such pledge without physical delivery thereof and the lien of this pledge shall be a first or prior lien superior to any and all other claims, whether such claims arise in contract, tort or otherwise and shall be superior to any lien or pledge that may hereafter be created.

Section 4.7 Enforcement of Obligations. The obligation of the City to make its Cities Hotel/Motel Tax Payments under this Article may be enforced by (i) the Authority, (ii) the Senior Lien Trustee or owners of any Senior Lien Bonds, in accordance with the applicable provisions of the Senior Lien Indenture and independently of the Authority or, (iii) such receiver or receivers as may be appointed pursuant to the Senior Lien Indenture or applicable law. The covenants and agreements hereunder including specifically the City's obligation to make its Cities Hotel/Motel Tax Payments shall be enforceable by specific performance; it being acknowledged and agreed by the Authority and the City that no other remedy at law is adequate to protect the interests of the parties hereto.

Section 4.8 Assignment of this Agreement. The City hereby consents to the assignment of the Authority's right, title, and interest in and to this Agreement to the Senior Lien Trustee pursuant to the Senior Lien Indenture to secure the Existing Senior Lien Bonds outstanding on the Effective Date hereof and Additional Senior Lien Bonds issued after the Effective Date hereof and hereby agrees that any notice to the Authority required under this Agreement with respect to such Existing Senior Lien Bonds and Additional Senior Lien Bonds shall be given in addition to the Senior Lien Trustee at the address then applicable for the Senior Lien Trustee under the Senior Lien Indenture and that any consent of the Authority required under this Agreement with respect to such Existing Senior Lien Bonds and Additional Senior Lien Bonds shall not be deemed to have been given unless such consent is obtained in writing from the Senior Lien Trustee and the Authority. The Senior Lien Trustee shall have all rights and remedies herein accorded to the Authority with respect to Existing Senior Lien Bonds outstanding on the Effective Date hereof and Additional Senior Lien Bonds issued after the Effective Date hereof, and any reference herein to the Authority with respect to such Existing Senior Lien Bonds and Additional Senior Lien Bonds shall be deemed, with the necessary changes in detail, to include the Senior Lien Trustee. The Senior Lien Trustee and the owners of the Existing Senior Lien Bonds outstanding on the Effective Date hereof and Additional Senior Lien Bonds issued after the Effective Date hereof are deemed to be and are third party beneficiaries of the representations, covenants and agreements of the City contained in this Agreement with respect to such Existing Senior Lien Bonds and Additional Senior Lien Bonds.

Section 4.9 No Set-Off. No breach, default or failure by the Authority to comply with the provisions of this Agreement shall permit an abatement or reduction in or set-off against the Cities Hotel/Motel Tax Payments due from the City. Nothing in this Agreement shall otherwise impair, diminish

or affect any other right or remedy available to the City (i) as a result of the Authority's breach, default or failure under this Agreement, or (ii) to enforce the obligations of the Authority under this Agreement. No dispute or litigation between the Authority and the City with respect to this Agreement shall affect any party's duties to perform its obligations or its rights or remedies while such dispute or litigation is pending.

ARTICLE V

SPECIAL COVENANTS OF CITY AND AUTHORITY

The City and the Authority each hereby covenants and agrees with each other and for the benefit of the owners of the Senior Lien Bonds as follows:

Section 5.1 Collection of Taxes. The City hereby covenants and agrees that during the Term of this Agreement it shall levy and collect the Hotel/Motel Tax within its corporate limits at the rate authorized by the Hotel/Motel Tax Law at the time of such levy, provided such rate during the Term of this Agreement shall be at least eight percent (8%), and from the proceeds derived therefrom make its Cities Hotel/Motel Tax Payments required pursuant to the applicable subsection of Section 4.4 hereof throughout the Term of this Agreement. This covenant shall be for the benefit of the owners of the Existing Senior Lien Bonds outstanding on the Effective Date hereof and Additional Senior Lien Bonds issued after the Effective Date in accordance with this Agreement and shall constitute a contract with the owners of such Existing Senior Lien Bonds and Additional Senior Lien Bonds and may be enforced by the Senior Lien Trustee with respect thereto.

Section 5.2 Records Regarding Cities Hotel/Motel Tax Payments.

The City shall provide to the Authority and the Senior Lien Trustee monthly a written statement on or before the date when the Cities Hotel/Motel Tax Payments are due hereunder of the amount of each Cities Hotel/Motel Tax Payments. Upon the prior written request of the Authority, the City shall make available for inspection during normal business hours the books and records of the City pertaining to the levy and collection of its Hotel/Motel Tax and related Cities Hotel/Motel Tax Payments by the City.

Section 5.3 Further Assurances and Corrective Instrument. The City and the Authority, as applicable, each respectively, hereby covenants and agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments, certificates and acknowledgments as may be reasonably requested under this Agreement, including, without limitation, to perfect the pledge of revenues payable hereunder securing payment of the principal of and interest on the Senior Lien Bonds and to replenish any deficiency in the Senior Lien Debt Service Reserve Account below the Senior Lien Debt Service Reserve Fund Requirement under the Senior Lien Indenture or for carrying out the intention of or facilitating the performance of this Agreement.

Section 5.4 Confirming Documents. In connection with the issuance of any Additional Senior Lien Bonds after the Effective Date, the City and the Authority, each respectively, hereby covenants and agrees, upon reasonable prior written request, to authorize, execute and deliver any reasonably requested certificates, letters or other documents in form and substance reasonably acceptable to the executing party confirming the agreed upon obligations and covenants of the applicable party under this Agreement in the event:

- (i) such certificates, letters or other documents are reasonably required by, as applicable, any rating agency, bond purchaser or other appropriate party or a legal requirement as a condition of issuance of the Additional Senior Lien Bonds and are in form and substance acceptable to the City or the Authority, as applicable; and

(ii) the Authority shall pay the costs and expenses incurred by the City in connection with the authorization, execution and delivery of such certificates, letters or other documents, including, but not limited to, the reasonable fees and expenses of attorneys representing the City.

Section 5.5 Reports to Department of Community Affairs.

The City shall annually file with the Department of Community Affairs a report specifying the rate of taxation and amounts collected and expended pursuant to the Hotel/Motel Tax Law and any other information which may be required by the Department of Community Affairs pursuant to the Hotel/Motel Tax Law.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Termination of this Agreement.

The Term of this Agreement shall expire and terminate in accordance with Section 4.1 hereof.

Section 6.2 Independent Contractor. In performing this Agreement, the Authority is acting as an independent contractor. The City shall not have any power to control the means, methods or techniques by which the Authority undertakes the activities or projects contemplated by this Agreement, except as may be otherwise expressly provided in this Agreement.

Section 6.3 Financial Liability.

(a) The financial liability of the Authority for failure to perform any of its obligations under this Agreement after the Effective Date hereof shall be limited to the Authority's interests in the Projects and in the operating revenues of the Projects.

(b) The financial liability of the City for failure to perform any of its obligations under this Agreement shall be limited to the interest of the City in the Cities Hotel/Motel Tax payable by the City under Section 4.4(a) or 4.4(b) of this Agreement.

Section 6.4 No Interest for City. By virtue of this Agreement, the City shall not have or hereafter acquire any legal or equitable interest of any nature in, under or to (i) any part of the property, real or personal, tangible or intangible, comprising or used in the Financed Projects, (ii) the leases, licenses, contracts, accounts or other intangible rights or obligations acquired or incurred by the Authority in connection with the acquisition, construction, improvement, equipping or operation of the Financed Projects, or (iii) the operating revenues of the Financed Projects except as otherwise agreed to in writing between the City and the Authority.

Section 6.5 No Third Party Beneficiaries. Nothing in this Agreement is intended or shall be deemed to confer any interest in this Agreement or benefit on persons not named parties to this Agreement, except as provided in Section 4.3, Section 4.7 and Section 5.1 of this Agreement with respect to the Senior Lien Trustee and owners of the Senior Lien Bonds and as may be otherwise expressly provided in this Agreement. No obligation imposed on any party under this Agreement is imposed for the benefit or with the intent to permit enforcement by another, not a party to this Agreement, except as may be otherwise expressly provided in this Agreement with respect to the Senior Lien Trustee and owners of the Senior Lien Bonds.

Section 6.6 Entire Agreement; Amendments.

(a) This Agreement contains the entire agreement of the City and the Authority relating to the specific matters covered by this Agreement. No representation, promise or understanding has been made, and no collateral agreement, stipulation or undertaking exists, which will have any force and effect with respect to the specific matters covered by this Agreement except as set forth in this Agreement.

(b) No amendment, modification, supplement, release, discharge or waiver of the provisions of this Agreement shall be of any force, value or effect unless it is in writing and is duly executed on behalf of the Authority and the City and, if required by the Senior Lien Indenture, is accomplished in accordance with the Senior Lien Indenture with the prior written consent of the Senior Lien Trustee.

Section 6.7 Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event the City is determined to have defaulted under any of the provisions of this Agreement and the Authority employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it shall on demand therefor pay to the Authority the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Authority.

(b) In the event the Authority is determined to have defaulted under any of the provisions of this Agreement and the City employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Authority herein contained, the Authority agrees that it shall on demand therefor pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

Section 6.8 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 6.9 Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered in person or when sent by registered courier or registered over-night delivery service or when mailed by registered or certified mail, return receipt requested, in each case with postage or other charges prepaid, to the parties hereto at the following addresses or such other address designated by such party in writing:

Authority: Cobb-Marietta Coliseum and Exhibit Hall Authority
Two Galleria Parkway
Atlanta, Georgia 30339
Attention: General Manager/CEO

City: City of Smyrna
2800 King Street
Smyrna, Georgia 30080
Attention: City Administrator

A copy of any notices, certificates or other communications given hereunder also shall be provided to the Senior Lien Trustee at the following address:

U.S. Bank Trust Company, National Association,
as Senior Lien Trustee
Global Corporate Trust
2 Concourse Parkway, Suite 800
Atlanta, Georgia 30328-5588
Attention: Mark C. Hallam, Assistant Vice President

Section 6.10 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns.

Section 6.11 Severability. If 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.

Section 6.12 Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which, shall be an original and all of which shall constitute but one and the same instrument.

Section 6.13 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 6.14 Law Governing this Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia. Jurisdiction and venue over any claim or dispute arising under this Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

Section 6.15 Prior Funding Agreements. Any and all prior agreements, leases, operating contracts, management contracts, or any other agreements or parts thereof in effect on or after the date of the Original Funding Agreement between the Authority and the City with respect to its Hotel/Motel Tax and the Galleria Project are hereby repealed and terminated and same shall be of no force and effect upon the execution, delivery and effectiveness of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Authority and the City have caused this Amended and Restated Galleria Convention Funding Agreement to be executed and delivered by their respective duly authorized officers, and their respective seals to be hereunto affixed and attested by their duly authorized officers on the date(s) set forth below, all to be effective as of the Effective Date set forth hereinabove.

(AUTHORITY SEAL)

Attest:

Secretary-Treasurer

THE AUTHORITY:

**COBB-MARIETTA COLISEUM AND
EXHIBIT HALL AUTHORITY**

By: _____
Chairman

Date: _____

(CITY SEAL)

Attest:

City Clerk

THE CITY:

CITY OF SMYRNA, GEORGIA

By: _____
Mayor

Date: _____

**The undersigned Senior Lien Trustee hereby
consents to this Amended and Restated
Galleria Convention Funding Agreement**

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, successor to U.S. Bank
National Association and successor to First
Union National Bank of Georgia, as Senior
Lien Trustee**

By: _____
Mark C. Hallam. Assistant Vice President

EXECUTION COPY

AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT

between

COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY

and

CITY OF SMYRNA, GEORGIA

DATED AS OF THE EFFECTIVE DATE

[Original Operating Agreement dated as of December 1, 1991,
and amended as of October 1, 1996]

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EXHIBIT A - ANNUAL EXCESS TAX PAYMENTS CALCULATION SPREADSHEET

AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT

THIS AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT (this “**Agreement**”) is dated as of the Effective Date (as defined herein), by and between the **COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY**, a body corporate and politic created and existing under the laws of the State of Georgia (the “**State**”), and the **CITY OF SMYRNA, GEORGIA**, a municipal corporation created and existing under the laws of the State, and amends and restates in its entirety the Prior Operating Agreement (as defined herein).

WHEREAS, the Authority (as defined herein) has heretofore been created pursuant to the Cobb-Marietta Coliseum and Exhibit Hall Authority Act (Georgia Laws 1980 p. 4091 *et seq.*, as amended, the “**Authority Act**”) and the Authority is now existing and operating and its members have been duly appointed and entered into their duties;

WHEREAS, the Authority was created for the general purpose of “. . . developing and promoting for the public good in this state the cultural growth, public welfare, education and recreation of the people of this state, including the erection and construction of a building or buildings which shall be public buildings to be used for amusement purposes or educational purposes or a combination of the two, and for fairs, expositions, or exhibitions in connection therewith, and the purchase of lands, easements, rights and lands and franchises for construction of such facility or facilities and for use in connection therewith . . .”;

WHEREAS, pursuant to the authority granted in the Authority Act, the Authority is empowered to undertake, without limitation, “. . . the acquisition, construction, equipping, maintenance and operation of multi-use coliseum and civic center type facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions and other public entertainments, which facilities if acquired or constructed after May 8, 2018 must be managed and operated directly by the Authority for its own use and the usual facilities related thereto, including, without limitation, refreshment stands and restaurants, and facilities for the purveying of foods, beverages, publications, souvenirs, novelties, and goods of all kinds, whether operated or purveyed directly or indirectly through concessions, licenses, leases or otherwise, parking facilities or parking areas in connection therewith, recreational centers and areas including, but not limited to, gymnasium and athletic facilities and related buildings, and the usual and convenient facilities appertaining to such undertakings and the extension and improvements of such facilities, acquiring the necessary property therefor, both real and personal and the lease, sale and licensing of any part or all of such facilities, including real and personal property, to any persons, firms or corporations whether public or private so as to assure the efficient and proper development, maintenance, and operation of such facilities and areas, deemed by the Authority to be necessary, convenient, or desirable . . .”;

WHEREAS, the City (as defined herein) is a municipal corporation organized and existing under the laws of the State of Georgia;

WHEREAS, Article IX, Section II, Paragraph III of the Constitution of the State (the “State Constitution”) authorizes the expenditure of public funds by counties and municipal corporations for parks, recreational areas, programs and facilities;

WHEREAS, Article IX, Section III, Paragraph I of the State Constitution (the “**Intergovernmental Contracts Clause**”) authorizes intergovernmental contracts between any “. . . county, municipality, school district or political subdivision of the state . . . with each other or any other public agency, public corporation, or public authority for joint services, for the provision of services or for joint or separate use of facilities or equipment. . .”;

WHEREAS, pursuant to the Authority Act, the Intergovernmental Contracts Clause of the State Constitution and other applicable provisions of State law, the Authority and the City entered into the Original Operating Agreement (as defined herein) as an intergovernmental contract for the provision of services and facilities in connection the hereinafter defined Galleria Project;

WHEREAS, the City is authorized to levy and collect within its boundaries, an excise tax upon the furnishing for value of public accommodations (the “**Hotel/Motel Tax**”) pursuant to the Hotel/Motel Tax Law (as defined herein), which Hotel/Motel Tax on the Effective Date is levied by the City at the rate of eight percent (8%) of the amount of the lodging charges actually collected;

WHEREAS, O.C.G.A. § 36-82-60 et seq. (the “**Revenue Bond Law**”) and in particular O.C.G.A. § 36-82-61(4)(e) authorizes the issuance of revenue bonds by governmental bodies for “. . . buildings to be constructed and used for the housing of exhibits for fairs and educational purposes; buildings to be used for the housing of livestock, horses, cattle, swine, poultry and agricultural exhibits for exhibition purposes; the erection and construction of buildings to be used for amusement or educational purposes or a combination of the two; and such buildings to be used for fairs, expositions, or exhibitions in connection therewith . . .”;

WHEREAS, on December 17, 1991, the Authority issued \$48,200,000 original aggregate principal amount of its Revenue Bonds, Series 1991 (the “**Series 1991 Bonds**”) pursuant to the Senior Lien Indenture (as defined hereinafter) in order to finance the acquisition and construction of that certain multi-use civic center, exhibit hall and meeting facilities known as “Cobb Galleria Centre” as a public facility to be owned and operated by the Authority, all for the benefit of the residents within the boundaries of the County (as defined herein);

WHEREAS, in order to secure payment of the Series 1991 Bonds and any additional bonds issued under the Senior Lien Indenture, the Authority pledged all revenues derived under the Original Funding Agreement (as defined herein) to the payment of principal of and interest on the Senior Lien Bonds (as defined herein);

WHEREAS, in connection with the Original Funding Agreement and the issuance of the Series 1991 Bonds issued to finance the acquisition and construction of the Galleria Project, the Authority and the City entered into the Original Operating Agreement with respect to the original Galleria Project;

WHEREAS, on May 18, 1993, the Authority issued \$47,965,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 1993 (the “**Series 1993 Bonds**”) in order to refund a portion of the Series 1991 Bonds;

WHEREAS, in order to finance certain additions to the Galleria Project, the Authority issued \$22,300,000 original aggregate principal amount of its Junior Lien Revenue Bonds, Series 1996A (the “**Series 1996A Junior Lien Bonds**”) on October 15, 1996 in accordance with the 1996 Funding Agreement Amendment and the 1996 Operating Agreement Amendment (both as defined herein);

WHEREAS, on October 19, 1999, the Authority issued \$23,950,000 original aggregate principal amount of its Revenue Bonds, Series 1999 (the “**Series 1999 Bonds**”) in order to finance the construction of an expansion of the Galleria Project;

WHEREAS, on March 15, 2005, the Authority issued \$15,375,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 2005 (the “**Series 2005 Bonds**”) in order to refund a portion of the outstanding Series 1999 Bonds;

WHEREAS, on December 3, 2009, the Authority issued \$14,335,000 original aggregate principal amount of its Junior Lien Revenue Refunding Bonds, Series 2009 (the “**Series 2009 Junior Lien Bonds**”)

pursuant to the Trust Indenture and Security Agreement dated as of October 1, 2009 (the “**Junior Lien Indenture**”), by and between the Authority and U.S. Bank Trust Company, National Association, as successor trustee (the “**Junior Lien Trustee**”) in order to refund all of the Authority’s then outstanding Series 1996A Junior Lien Bonds;

WHEREAS, as of September 1, 2023, the Authority’s outstanding \$12,720,000 aggregate principal amount of Series 1993 Senior Lien Bonds and its outstanding \$6,175,000 aggregate principal amount of Series 2005 Senior Lien Bonds, which together totaled \$18,895,000 (collectively, the “**Existing Senior Lien Bonds**”), were the Authority’s only outstanding Senior Lien Bonds, and have a final maturity date of October 1, 2026;

WHEREAS, all previously outstanding Series 2009 Junior Lien Bonds were paid in full and the Junior Lien Trustee discharged the Junior Lien Indenture on or about July 11, 2023;

WHEREAS, pursuant to House Bill 658 of the 2017-2018 General Session of the State General Assembly (“**HB 658**”), which became effective as of July 1, 2018, the expiration of the period of time during which the Hotel/Motel Tax may be levied and collected in the City was extended from not later than December 31, 2028 to not later than December 31, 2053;

WHEREAS, pursuant to Senate Bill 489 of the 2017-2018 General Session of the State General Assembly (“**SB 489**”), which became effective as of May 8, 2018, the Authority Act was amended to limit the types of facilities to be financed by the Authority’s revenue bonds after May 8, 2018 to those facilities that are operated and managed directly by the Authority for its own use;

WHEREAS, the parties acknowledge that certain relevant circumstances of the Authority and certain of the Cities have changed since the effective date of the Original Operating Agreement and that the Authority desires to issue additional bonds in the future to be secured in whole or in part by the pledge of the City’s payments of 62.5% of its Hotel/Motel Tax revenues to or for the account of the Authority pursuant to the Funding Agreement (as defined herein); and

NOW, THEREFORE, the Authority and the City have agreed to enter this Agreement in order to amend and restate the Prior Operating Agreement in its entirety and have agreed to contemporaneously enter into the Funding Agreement in order to amend and restate the Prior Funding Agreement (as defined herein) in its entirety.

IN CONSIDERATION OF Ten Dollars in hand paid, the respective covenants, representations and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Authority and the City agree as follows, including, without limitation, that the foregoing premises and Whereas paragraphs shall be, and are hereby declared to be, substantive provisions of this Agreement:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, (a) the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of the words and terms herein defined and (b) all capitalized terms and phrases used herein, but not defined herein, shall have the meanings assigned thereto under the Funding Agreement:

“1996 Funding Agreement Amendment” means the Amendment No. One to Convention Funding Agreement, dated as of October 1, 1996, between the Authority and the City amending the Original Funding Agreement.

“1996 Operating Agreement Amendment” means the Amendment No. One to Operating Agreement, dated as of October 1, 1996, between the Authority and the City amending the Original Operating Agreement.

“Additional Senior Lien Bonds” means Senior Lien Bonds or any other form of senior lien financing or refinancing or refunding payable from or secured by, in whole or in part, directly or indirectly, any Cities Hotel/Motel Tax Payments or funds derived directly or indirectly from or in connection with Cities Hotel/Motel Tax Payments payable under or in connection with this Agreement (including, without limitation, any such financing pursuant to a financing plan not involving bonds per se), issued or entered into by the Authority after September 1, 2023.

“Annual Excess Tax Payments” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the remaining balance amount that would have remained in the Tax Payments Fund at the end of such Fiscal Year after (a) deducting all amounts paid pursuant to subparts (i) through and including (iv) of Section 4.2(b) of this Agreement during such Fiscal Year as if no other amounts had been withdrawn from the Tax Payments Fund, (b) adding the amount of any Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund and (c) adding the amount of any other Cities Hotel/Motel Tax Payments not deposited into the Tax Payments Fund, as determined at the end of each Fiscal Year in accordance with Section 4.2(b)(vi) hereof.

“Annual Excess Tax Payments Above the Cap” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the amount by which the total Annual Excess Tax Payments amount exceeds the amount of the Cap on Authority’s Excess Portion for such Fiscal Year.

“Authority” means the Cobb-Marietta Coliseum and Exhibit Hall Authority, a body corporate and politic created and existing under the laws of the State, and its successors and assigns.

“Authority Bond Documents” means, collectively, this Agreement, the Funding Agreement, the Senior Lien Indenture and all other Bond Financing Documents to which the Authority is or will be a party or is or will be bound or subject, and all amendments or supplements to any such document.

“Authority’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, an amount equal to 62.5% of the Annual Excess Tax Payments for such Fiscal Year, subject to the Cap on Authority’s Excess Portion, provided, such amount also shall be subject to the Cap on Authority’s Excess Portion.

“Bond Financing Documents” means, collectively, the Funding Agreement, the Senior Lien Indenture and any other document evidencing, governing or securing repayment of Senior Lien Bonds or necessary or appropriate in connection with the issuance and sale of Additional Senior Lien Bonds, including, but not limited to, disclosure documents, validation documents and any bond insurance policy.

“Bondholders” means the registered owner of any outstanding Senior Lien Bonds.

“Cap on Authority’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the amount equaling (x) 1.25 multiplied by (y) the highest Fiscal Year total of the amount of all County Tax Payments and all Cities Hotel/Motel Tax Payments paid by the County and Cities to the Authority or the Senior Lien Trustee by or on behalf of the Authority in the five most recent Fiscal Years.

“Cities” means, each respectively and all collectively, the City and the cities of Acworth, Austell, Kennesaw, Marietta, and Powder Springs, unless otherwise expressly provided herein, together with any other city located in the boundaries of the County that enters into a City Funding Agreement and a City Operating Agreement with the Authority, unless otherwise expressly provided herein, in each case for so long as any such city has a City Funding Agreement and a City Operating Agreement with the Authority in effect at the applicable time.

“Cities Hotel/Motel Tax Payments” means, collectively, the payments of Hotel/Motel Tax revenues paid by each of the Cities to or for the account of the Authority under the applicable City Funding Agreement, including the City’s payments of Hotel/Motel Tax revenues required pursuant to Section 4.4(a) of the Funding Agreement with respect to the Existing Senior Lien Bonds and the Additional Senior Lien Bonds prior to the Transition Date or required pursuant to Section 4.4(b) of the Funding Agreement with respect to the Additional Senior Lien Bonds on and after the Transition Date.

“City” means the City of Smyrna, Georgia, a municipal corporation created and existing under the laws of the State, and its successors and assigns.

“City’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, an amount equal to the City’s Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments for such Fiscal Year.

“City Funding Agreement” means, each respectively and as applicable all collectively, (a) the Original City Funding Agreements in effect at the applicable time, (b) the Funding Agreement, and (c) the convention funding agreements by and between the Authority and each of the cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs, unless otherwise expressly provided herein, together with each similar convention funding agreement between the Authority and a city located in the boundaries of the County entered into after September 1, 2023, as the same may be supplemented or amended from time to time.

“City Operating Agreement” means, each respectively and as applicable all collectively, (a) the Original City Operating Agreements in effect at the applicable time, (b) this Agreement, and (c) the operating agreements by and between the Authority and each of the cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs, unless otherwise expressly provided herein, together with each similar operating agreement between the Authority and a city located in the boundaries of the County entered into after September 1, 2023, as the same may be supplemented or amended from time to time.

“Conforming City” and **“Conforming Cities”** means, each respectively and collectively, as applicable, each of the Cities that has entered into a Conforming City Funding Agreement and a Conforming City Operating Agreement with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement, which may include a new city located in the boundaries of the County.

“Conforming City Funding Agreement” means, each respectively and collectively, as applicable, a City Funding Agreement between a Conforming City and the Authority (regardless of its title and regardless of whether it is amended or amended and restated) with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement with respect to the extended Term, the percent of Hotel/Motel Tax revenues pledged to secure Additional Senior Lien Bonds, the payment and application of Cities Hotel/Motel Tax Payments, the flow of funds for Cities Hotel/Motel Tax Payments and County Hotel/Motel Tax Payments, the flow of funds for Project Operating Revenues, and the flow of funds for the Renewal and Expansion Fund.

“Conforming City Operating Agreement” and **“Conforming Cities Operating Agreements”** means, each respectively and collectively, as applicable, a City Operating Agreement between a Conforming City and the Authority (regardless of its title and regardless of whether it is amended or amended and restated) with substantially similar substantive terms as the County Funding Agreement and the County Operating Agreement with respect to the extended Term, the percent of Hotel/Motel Tax revenues pledged to secure Additional Senior Lien Bonds, the payment and application of Cities Hotel/Motel Tax Payments collections, the flow of funds for Cities Hotel/Motel Tax Payments and County Hotel/Motel Tax Payments, the flow of funds for Project Operating Revenues, and the flow of funds for the Renewal and Expansion Fund.

“County” means Cobb County, Georgia, a political subdivision of the State.

“County Collection Fee(s)” means the collection fee payable to the County in accordance with the County Operating Agreement for costs incurred by the County in connection with levying, collecting and administering the Hotel/Motel Tax and the Liquor-by-the-Drink Tax, which collection fee shall be calculated in accordance with the County Operating Agreement.

“County Funding Agreement” means the Amended and Restated Galleria Convention Funding Agreement, dated as of September 1, 2023, between the County and the Authority, as the same may be supplemented or amended from time to time.

“County Hotel/Motel Tax Payments” means the payments of Hotel/Motel Tax revenues paid by the County to or on behalf of the Authority pursuant to the County Funding Agreement.

“County Liquor-by-the-Drink Tax Payments” means the payments of Liquor-by-the-Drink Tax revenues paid by the County to or on behalf of the Authority pursuant to the County Funding Agreement.

“County Monthly Contract Payments” means the payments due to the County monthly in accordance with the County Operating Agreement.

“County Operating Agreement” means the Amended and Restated Galleria Operating Agreement, dated as of September 1, 2023, between the County and the Authority, as the same may be supplemented or amended from time to time.

“County Tax Payments” means the County’s payments of its Hotel/Motel Tax revenues and the County’s payments of its Liquor-by-the-Drink Tax revenues required pursuant to Section 4.4 of the County Funding Agreement.

“County/Cities Hotel/Motel Tax Payments” means, collectively, the County Hotel/Motel Tax Payments and the Cities Hotel/Motel Tax Payments.

“County/Cities Tax Payments” means, collectively, all County Tax Payments and all Cities Hotel/Motel Tax Payments.

“CT&T” means Cobb Travel & Tourism, Inc., a Georgia nonprofit corporation, or any successor nonprofit corporation or alternative nonprofit corporation approved by the County and the Authority and satisfying the requirements of the Hotel/Motel Tax Law with respect to such nonprofit corporation’s expenditure of County/Cities Hotel/Motel Tax Payments pursuant to a contract with the County or the Authority as a qualified expenditure under the Hotel/Motel Tax Law.

“Effective Date” means October 1, 2023.

“Existing Galleria Project” means the multipurpose convention, exhibit hall and meeting facilities commonly referred to as the Cobb Galleria Centre, any associated parking areas or improvements thereto and all other facilities and improvements determined by the Authority to be necessary or convenient in connection with the Cobb Galleria Centre, which may include, without limitation, related lands, air space, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed for the benefit of the citizens of the County, as the same exists on September 1, 2023.

“Financed Project” or **“Financed Projects”** means, collectively and each respectively, (a) the Galleria Project and (b) any other facilities, buildings, structures, improvements, expansions, additions, replacements, renovations, related lands, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), and any other multi-use coliseum and civic center type facilities of the type described in the Authority Act, in each case if and to the extent acquired, constructed, rehabilitated or installed by or on behalf of the Authority after September 1, 2023 and financed in whole or in part by Senior Lien Bonds, provided, however, that all such facilities acquired, constructed or installed after May 8, 2018 must be managed and operated directly by the Authority for its own use on behalf of the citizens of the County.

“Fiscal Year” means the fiscal year for the Authority ending September 30 of each year or such fiscal year as may be changed by appropriate proceedings of the Authority.

“Funding Agreement” means the Amended and Restated Galleria Convention Funding Agreement, dated as of the Effective Date, by and between the Authority and the City, as the same may be supplemented or amended from time to time.

“funds derived from County/Cities Tax Payments” or any similar or comparable phrase shall include, without limitation, net investment earnings on County/Cities Tax Payments, except only during the Gap Period net investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund rather than the Tax Payments Fund shall be excluded.

“Future Galleria Project” means any future Financed Project consisting of improvements of, additions to or expansions of the Existing Galleria Project after September 1, 2023, which may include, without limitation, related lands, buildings, structures, fixtures, equipment and personalty appurtenant or convenient to such facilities (any and all of the aforesaid are referred to herein as “facilities” as a broadly construed all-inclusive term), all operated and managed directly by the Authority for its own use for the benefit of the citizens of the County.

“Galleria Project” means, collectively, the Existing Galleria Project and any Future Galleria Project.

“Gap Period” means the period of time commencing on September 1, 2023 and ending, as applicable, (a) with respect to any Original City Funding Agreement and Original City Operating Agreement, on the date such Cities and the Authority have executed a Conforming City Funding Agreement and a Conforming City Operating Agreement and (b) on the termination date of an Original City Funding Agreement and Original City Operating Agreement in the event the same are never amended or amended and restated or otherwise modified after September 1, 2023.

“Hotel/Motel Tax Law” means O.C.G.A. Title 48, Chapter 13, Article 3 *et seq.*, as amended, including in particular, without limitation, O.C.G.A. § 48-13-51(a)(5.1), authorizing the governing authority of each county within the State, within the territorial limits of the special district (created under O.C.G.A. § 48-13-51) and each municipality in the State located within the special district, to levy and collect an excise tax upon the furnishing of public accommodations at the applicable rate or rates specified therein.

“Liquor-by-the-Drink Tax” means the excise tax levied and collected by the County upon the sale of distilled spirits by-the drink pursuant to O.C.G.A. Title 3, Chapter 4, Article 5, Part 3, *et seq.*, as amended.

“O.C.G.A.” means the Official Code of Georgia Annotated, as amended.

“Operating Revenue Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Operating Revenue Fund created pursuant to and governed by Section 4.1 of this Agreement.

“Original City Funding Agreement” and **“Original City Funding Agreements”** means, each respectively and all collectively, the City Convention Funding Agreements, dated December 1, 1991, between the Authority and each of the Cities, entered into in connection with the issuance of the Series 1991 Bonds, as amended from time to time and in effect as of September 1, 2023.

“Original City Operating Agreement” and **“Original City Operating Agreements”** means, each respectively and all collectively, the Operating Agreements, dated December 1, 1991, between the Authority and each of the Cities, entered into in connection with the issuance of the Series 1991 Bonds, as amended from time to time and in effect as of September 1, 2023.

“Original Funding Agreement” means the Convention Funding Agreement, dated as of December 1, 1991, between the Authority and the City, with respect to the original Galleria Project.

“Original Operating Agreement” means the Operating Agreement, dated as of December 1, 1991, between the Authority and the City, with respect to the original Galleria Project.

“Prior Funding Agreement” means the Original Funding Agreement, as amended by the 1996 Funding Agreement Amendment.

“Prior Operating Agreement” means the Original Operating Agreement, as amended by the 1996 Operating Agreement Amendment.

“Project” or **“Projects”** means, collectively and each respectively, the Galleria Project, any other Financed Project existing on September 1, 2023 and any future Financed Project undertaken in accordance with the Funding Agreement and this Agreement.

“Project Operating Revenues” means in the aggregate with respect to all Projects under this Agreement any and all gross revenues, receipts, income, rent, concessions and other money of any nature or in any form whatsoever received by or on behalf of the Authority or accruing to the benefit of the Authority from or in connection with the Galleria Project or any other Financed Project, including, without limitation, revenues from any ground lease, rental agreement, user or occupancy agreement, operating agreement, license or concession agreement, franchise agreement, or any similar or comparable type agreement or arrangement, lease or sale of air rights, any sale, lease or other disposition of naming rights and/or signage rights, or any other lease, sale or disposition of property or assets or any kind, any investment earnings on any of the foregoing revenues and during the Gap Period any investment earnings on Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund, but excluding all County/Cities Tax Payments from the County or any of the Cities, all net investment earnings on County/Cities Tax Payments deposited into the Tax Payments Fund and all other funds derived from County/Cities Tax Payments.

“Project Working Capital Reserve” means funds in an amount not to exceed the sum of 2.0 multiplied by the monthly average amount of the Authority’s then current Fiscal Year’s estimated operating

and maintenance expenses of the Galleria Project and all Financed Projects, which amount the Authority may retain in the Operating Revenue Fund in accordance with Section 4.1(b) hereof.

“Pro-Rata Share Per H/MT Contributions” means a pro-rata share of the amount of County/Cities Hotel/Motel Tax Payments made by the County and by all Cities with respect to, as applicable in the context, a calendar month or a Fiscal Year; for example, during Fiscal Year 2022 the City’s Pro-Rata Share Per H/MT Contributions was 4.6% because the total amount of the Cities Hotel/Motel Tax Payments attributed to the City with respect to Fiscal Year 2022 equaled \$596,093, which was 4.6% of the total \$13,037,517 of County/Cities Hotel/Motel Tax Payments made by the County and all Cities to or on behalf of the Authority with respect to such Fiscal Year 2022.

“R&E Minimum Balance Requirement” shall have the meaning set forth in Section 4.3(c) hereof.

“Renewal and Expansion Fund” or **“R&E Fund”** means the Renewal and Expansion Fund created pursuant to and governed by Section 4.3 of this Agreement, together with any other reserve funds established by the Authority during the Term of this Agreement serving a comparable purpose as the R&E Fund regardless of how such other reserve fund is labeled or characterized (excluding any debt service reserve funds for Senior Lien Bonds held by the Senior Lien Trustee under the Senior Lien Indenture or under a similar Bond Financing Document, excluding the Project Working Capital Reserve and excluding the reserve funds and renewal and expansion funds established exclusively for other Authority projects such as the Performing Arts Center).

“Senior Lien Bonds” means, collectively, the Existing Senior Lien Bonds and any Additional Senior Lien Bonds, which are secured under the Senior Lien Indenture by a senior priority pledge of and lien on the County/Cities Tax Payments.

“Senior Lien Indenture” means the Trust Indenture dated as of November 1, 1991, by and between the Authority and U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association, as trustee, and as successor to First Union National Bank of Georgia, as trustee, pursuant to which the Senior Lien Bonds have been issued, as supplemented and amended by the First Supplemental Indenture, dated as of April 1, 1993, the Second Supplemental Indenture, dated as of October 1, 1999, and the Third Supplemental Indenture, dated as of February 1, 2005, as the same may be further amended or supplemented or replaced by a successor document from time to time hereafter.

“Senior Lien Trustee” means U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association and First Union National Bank of Georgia, each respectively, as trustee, or any successor trustee appointed pursuant to the terms of the Senior Lien Indenture.

“Tax Payments Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Tax Payments Fund created pursuant to and governed by Section 4.2 of this Agreement.

“Term” means the term of this Agreement set forth in Section 7.1 hereof.

“Transition Date” means the first date on which no Existing Senior Lien Bonds remain outstanding, which date as of September 1, 2023 is expected to be October 2, 2026.

ARTICLE II

REPRESENTATIONS

Section 2.1 **Representations and Agreements by the Authority.** The Authority makes the following representations and agreements as the basis for the undertakings on its part herein contained:

(i) The Authority is a body corporate and politic created and existing under the laws of the State, including in particular the Authority Act and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence; the Authority is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the City for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The Authority has the power to enter into this Agreement and to perform all obligations contained herein, is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, by proper action has duly authorized the execution, delivery and performance of this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained prior to or as of the Effective Date hereof;

(iii) The Authority is empowered specifically (a) to borrow money and to issue its revenue bonds and to use the proceeds thereof for the purpose of paying all or part of the cost of any “project” as defined in the Authority Act as of the time of such issuance or for the purpose of refunding any such bonds of the Authority theretofore issued, and to otherwise carry out its purposes, and to pay all costs of the Authority incident to or necessary and appropriate to such purposes, (b) to make and execute contracts and other instruments necessary to exercise the powers of the Authority, including, without limitation, contracts with the City, and (c) to pledge or assign any properties, revenues, income, tolls, charges, or fees owned or received by the Authority;

(iv) The Authority is not subject to any bylaw or contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts, or prevents it from entering into this Agreement and performing its obligations hereunder;

(v) The issuance and sale of the Senior Lien Bonds, the execution and delivery of this Agreement, the Senior Lien Indenture and all other Authority Bond Documents, and the performance of all covenants and agreements of the Authority contained in this Agreement and the other Authority Bond Documents and of all other acts and things required under the State Constitution and laws of the State to make this Agreement and each other Authority Bond Document a valid and binding obligation of the Authority in accordance with its respective terms are authorized by law and have been (or will be as to Authority Bond Documents with respect to Additional Senior Lien Bonds) duly authorized by proceedings of the Authority adopted at public meetings thereof duly and lawfully called and held;

(vi) This Agreement, the Senior Lien Indenture and the other Authority Bond Documents have been or will be duly executed and delivered by the Authority and do or will constitute its legal, valid, and binding obligation enforceable in accordance with their respective terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(vii) The authorization, execution, delivery, and performance by the Authority of this Agreement, the Senior Lien Indenture and the other Authority Bond Documents and compliance by the

Authority with the respective provisions hereof and thereof do not and will not violate the State Constitution or the laws of the State or constitute a breach of or a default under, any other law, court order, administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound or subject;

(viii) There is no litigation or proceeding pending, or to the knowledge of the Authority threatened, against the Authority or against any person having a material adverse effect on the right of the Authority to execute this Agreement, the Funding Agreement, the Senior Lien Indenture or the other Authority Bond Documents or the ability of the Authority to comply with any of its obligations under this Agreement, the Funding Agreement, the Senior Lien Indenture or the other Authority Bond Documents; and

(ix) The Authority shall make the payments required pursuant to the Funding Agreement or this Agreement, included, without limitation, the payments to the City required under Sections 4.1, 4.2, 4.3, 4.4 and 4.5 hereof, all at the times and in the amounts provided in this Agreement.

Section 2.2 Representations and Agreements by the City. The City makes the following representations and agreements:

(i) The City is a municipal corporation of the State duly created and existing under the laws of the State; the City is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the Authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The City has the power and authority to enter into and execute and deliver this Agreement, and, by proper action of its governing body, has authorized the execution and delivery of this Agreement and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained as of the Effective Date hereof;

(iii) This Agreement has been duly executed and delivered by the City and constitutes its legal, valid, and binding obligation enforceable in accordance with its terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(iv) The authorization, execution, delivery, and performance by the City of this Agreement and compliance by the City with the provisions thereof do not violate the State Constitution or the laws of the State relating to the City or constitute a breach of or a default under, any other law, court order, administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound;

(v) There is no litigation or proceeding pending, or to the knowledge of the City threatened, against the City or any other person having a material adverse effect on the right of the City to execute this Agreement or the Funding Agreement, or its ability to comply with any of its obligations under this Agreement or the Funding Agreement; and

(vi) The City has, pursuant to resolutions and ordinances duly adopted by its governing body, authorized the levy and collection of its Hotel/Motel Tax, and certain revenues derived from such levy shall be used and applied as provided in the Funding Agreement and this Agreement during the Term of this Agreement.

ARTICLE III

ISSUANCE OF SENIOR LIEN BONDS; CONSTRUCTION AND OPERATION OF FINANCED PROJECTS

Section 3.1 Additional Senior Lien Bonds Proposed after the Effective Date.

The City agrees that the Authority may issue Additional Senior Lien Bonds in accordance with the Senior Lien Indenture after the Effective Date without any further approval of the City and that such Additional Senior Lien Bonds shall be secured by the County/Cities Tax Payments to the same extent and in the same manner as the Senior Lien Bonds outstanding on the Effective Date; provided, however, no such Additional Senior Lien Bonds may mature later than October 1, 2053.

Section 3.2 Operation of Financed Projects; Payment of Operating Expenses; Rate Covenant.

(a) The Authority at all times (i) shall operate the Galleria Project and all other Financed Projects undertaken after the Effective Date hereof economically, efficiently and consistent with good business practices and in compliance with the terms of the Authority Act, (ii) shall maintain the Financed Projects in good condition and shall promptly repair, replace and restore any damage to or destruction of any of the Financed Projects or any portion thereof, (iii) shall maintain adequate insurance with respect to all Projects and all operations of the Authority in accordance with Section 6.9 hereof, and (iv) shall cause all Projects to be maintained and operated so as to make the benefits thereof generally available to the residents within the boundaries of the County.

(b) The Authority shall pay or cause to be paid from Project Operating Revenues all reasonable and necessary costs of operating, maintaining and repairing the Financed Projects including salaries, wages, employee benefits, the payment of any contractual obligations incurred pertaining to the operation of the Financed Projects, cost of materials and supplies, rentals of leased property, real or personal, insurance premiums, audit fees, any incidental expenses of the Authority and such other charges as may properly be made for the purpose of operating, maintaining and repairing the Financed Projects in accordance with sound business practice, as specified under Section 4.1(b) hereof.

(c) The Authority shall cause the Project to be operated and maintained economically, efficiently and consistent with good business practices and in compliance with the terms of the Authority Act. The Authority shall at all times maintain the Project in good condition and repair and shall promptly repair, replace or restore any damage or destruction to the Project or cause the proceeds from insurance from such damage or destruction to be applied in accordance with the terms hereof. It shall also cause the Project to be maintained and operated so as to make its benefits generally available to the residents within the boundaries of the County, and it shall establish and maintain, or cause to be established and maintained, a schedule of rates, fees and charges for the use of the facilities constituting the Project in accordance with the terms hereof; provided, however, this subsection (c) shall not preclude the Authority from deviating from such schedule and/or negotiating specific rates, fees and charges for specific events and uses.

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ARTICLE IV

CREATION OF FUNDS; FLOW OF FUNDS

Section 4.1 Operating Revenue Fund.

(a) The Authority shall create and maintain a special fund designated as the “Cobb-Marietta Coliseum and Exhibit Hall Authority – Galleria Operating Revenue Fund” separate and apart from other funds and accounts of the Authority.

(b) Commencing on September 1, 2023, the Authority promptly shall collect and deposit into the Operating Revenue Fund and shall use and apply in accordance with this Section 4.1(b) all Project Operating Revenues; provided, however, in no event shall County/Cities Tax Payments or funds received by or on behalf of the Authority derived from or in connection with County/Cities Tax Payments (including, without limitation, payments received by the Authority from the Senior Lien Trustee under the Senior Lien Indenture) be deposited into the Operating Revenue Fund, and instead such funds shall be deposited into the Tax Payments Fund in accordance with Section 4.2 hereof; provided further, however, only if required under an Original City Operating Agreement in effect and unmodified as of September 1, 2023 and only for so long as such Original City Operating Agreement remains in effect in accordance with its original terms and unmodified, Cities Hotel/Motel Tax Payments required to be deposited into the Operating Revenue Fund and applied in accordance with such Original City Operating Agreement may be so deposited and applied only during the Gap Period, but shall be treated as though they are held in the Tax Payments Fund for purposes of all calculations required under this Agreement; and provided further, however, in accordance with Section 4.3 hereof certain specified Authority’s Excess Portion funds (comprised of funds derived from County/Cities Tax Payments) may be transferred from the Renewal and Expansion Fund to the Operating Revenue Fund in accordance with Section 4.3(d)(iv) hereof. Subject to the foregoing, the Authority shall apply money deposited into the Operating Revenue Fund only for the following purposes in the following order of priority:

(i) First, only if required by an Original City Operating Agreement in effect and unmodified as of September 1, 2023 and only for so long as such Original City Operating Agreement remains in effect in accordance with its original terms and unmodified, during the Gap Period to the payment of any excess Cities Hotel/Motel Tax Payments payable to such Cities from the Operating Revenue Fund in accordance with such Original City Operating Agreement;

(ii) Second, to the payment of operating and maintenance expenses of the Galleria Project and any other Financed Projects in accordance with Section 3.2 hereof and payment of all administrative expenditures related to the Senior Lien Bonds such as Senior Lien Trustee’s fees and expenses, rating agency fees, rebate analyst’s fees and arbitrage rebate payments, and when applicable the transfer to the Tax Payments Fund of an amount equal to the amount of any County Tax Payments and any Cities Hotel/Motel Tax Payments (if paid by Conforming Cities) applied by the Senior Lien Trustee to pay any Rebate Amount under the Senior Lien Indenture;

(iii) Third, only if required by an Original City Operating Agreement in effect and unmodified as of September 1, 2023 and only for so long as such Original City Operating Agreement remains in effect in accordance with its original terms and unmodified, during the Gap Period to the payment of any collection fees due to such Cities in accordance with such Original City Operating Agreement;

(iv) Fourth, subject to the limitations stated hereinafter, to the payment of any amounts for the promotion of tourism, convention or trade shows in the boundaries of the County, including,

without limitation, any such amounts required under agreements with CT&T, the County, the State, a department of the State, a convention and visitor's bureau created by local act of the Georgia General Assembly for a municipality or county, a private sector non-profit organization or some combination of the foregoing;

(v) Fifth, the Authority may retain in the Operating Revenue Fund an amount not to exceed the permitted amount of the Project Working Capital Reserve; and

(vi) Sixth, all remaining funds in the Operating Revenue Fund shall be transferred monthly to the Renewal and Expansion Fund.

Notwithstanding the foregoing, (A) the payments under subpart (ii) of this Section 4.1(b) of expenses relating to the promotion of destination tourism including, but not limited to, the cost of promoting tourism, convention or trade shows in the boundaries of the County, whether paid under an agreement or contract with CT&T or another third party (excluding any amounts owed to the County under a contract with the County), shall be subordinate to all County Monthly Contract Payments and all County Collection Fees payable to the County under the County Operating Agreement and shall not be considered a cost of operating and maintaining the Galleria Project or any other Financed Project under Section 3.2 hereof or Section 4.1(b)(i) hereof or under any other agreement between the Authority and the County; and (B) in the event the County is not paid in full when due the County Monthly Contract Payment in accordance with the County Operating Agreement or not paid in full when due the County Collection Fee in accordance with the County Operating Agreement and for so long as such amounts or any portion thereof remain unpaid, the Authority shall not pay any amounts under subpart (ii) of this Section 4.1(b) unless such expenditures are specifically approved in writing as set forth in the County Operating Agreement.

Section 4.2 Tax Payments Fund.

(a) The Authority shall create and maintain a special fund designated as the "Cobb-Marietta Coliseum and Exhibit Hall Authority-Galleria Tax Payments Fund" separate and apart from other funds and accounts of the Authority, and the depository bank's records thereof shall be available for inspection on behalf of the City during normal business hours.

(b) Commencing on September 1, 2023, the Authority shall deposit into the Tax Payments Fund all County/Cities Tax Payments and all payments received by the Authority from the Senior Lien Trustee under the Senior Lien Indenture derived from or in connection with County/Cities Tax Payments (including, without limitation, all net investment earnings on funds derived from County/Cities Tax Payments held in the Tax Payments Fund), provided, however, only if required under an Original City Operating Agreement in effect and unmodified as of September 1, 2023 and only for so long as such Original City Operating Agreement remains in effect in accordance with its original terms and unmodified, Cities Hotel/Motel Tax Payments required to be deposited into the Operating Revenue Fund and applied in accordance with such Original City Operating Agreement may be so deposited and applied only during the Gap Period, but shall be treated as though they are held in the Tax Payments Fund for purposes of all calculations required under this Agreement. Subject to the foregoing, the Authority shall apply money deposited into the Tax Payments Fund for the following purposes in the following order of priority applying the following specified funds at the following times:

(i) First, monthly on or before the 20th day of each calendar month, payment to the Senior Lien Trustee for deposit into the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture (as such Fund and Accounts or functionally equivalent funds and accounts are identified in the Senior Lien Indenture) in the event that in any month there is a deficiency in the amount required to be on

deposit in the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture, applying first all available County/Cities Hotel/Motel Tax Payments funds, and only if such funds are insufficient, then applying available County Liquor-by-the-Drink Tax Payments funds;

(ii) Second, monthly on or before the 25th day of each calendar month, payment to the County and the Conforming Cities based on the amount due the County and due each of such Conforming City (A) the County Monthly Contract Payments and (B) the monthly contract payments (if any) due the respective Conforming Cities pursuant to the respective Conforming City Operating Agreement, applying first all available County/Cities Hotel/Motel Tax Payments funds, and only if such funds are insufficient, then applying available County Liquor-by-the-Drink Tax Payments funds, and any deficiency in the amount of such County Monthly Contract Payments due to the County and monthly contract payments due to the respective Conforming Cities shall remain due and payable, shall accumulate and shall be added to the next succeeding County Monthly Contract Payments due to the County and monthly contract payments (if any) due to the respective Conforming Cities until paid in full;

(iii) Third, monthly on or before the 25th day of each calendar month, payment pro-rata to the County of the County Collection Fee and the collection fee due to the Conforming Cities (if any) pursuant to the respective Conforming Cities Operating Agreements, applying available County Hotel/Motel Tax Payments funds to pay the County Collection Fee with respect to County Hotel/Motel Tax Payments, applying available Cities Hotel/Motel Tax Payments funds to pay to Conforming Cities (if any) the collection fee due to such Conforming Cities, if any, and applying available County Liquor-by-the-Drink Tax Payments funds to pay the County Collection Fee with respect to the County Liquor-by-the-Drink Tax Payments; in the event the amount of specified funds on deposit in the Tax Payments Fund is not sufficient to pay in full when due such County Collection Fees and Conforming Cities collection fees, payment of such amounts shall be made pro-rata to the County and the applicable Conforming Cities based on the amount due the County and due each of such Conforming Cities (if any), and any deficiency in the amount of such collection fee payments shall remain due and payable, shall accumulate and shall be added to the next succeeding collection fee payments until paid in full;

(iv) Fourth, subject to the limitations set forth hereinafter, and only if and to the extent each such expenditure (x) is an itemized expenditure as set forth in the County Operating Agreement, and (y) conforms to the requirements of the Hotel/Motel Tax Law, cash amounts payable monthly by the Authority to CT&T pursuant to a contract between the Authority and CT&T or other amounts required under agreements for the promotion of tourism, convention or trade shows in the boundaries of the County in accordance with the Hotel/Motel Tax Law, with the County, the State, a department of the State, a convention and visitor's bureau created by local act of the Georgia General Assembly for a municipality or county, a private sector non-profit organization or some combination of the foregoing, provided, however, no money derived from the Liquor-by-the-Drink Tax shall be used for this purpose, and further provided, however, no funds shall be applied to pay or reimburse the Authority for the value of any non-cash in-kind consideration granted by the Authority to CT&T or any other entity such as the value of free or complimentary office space, and the value of any such non-cash in-kind consideration shall not be included in any calculation under this Agreement or the Funding Agreement;

(v) Fifth, provided all amounts payable in accordance with subparts (i) through and including (iv) of this Section 4.2(b) have been paid in full, monthly no earlier than the 25th day of each calendar month, (A) for September 2023, transfer to the R&E Fund the balance in the Tax Payments Fund, and (B) beginning upon the commencement of Fiscal Year 2024 and continuing

throughout the Term of this Agreement, transfer to the R&E Fund no more than 62.5% of the remaining balance that would have remained in the Tax Payments Fund (including, without limitation, Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund and any other Cities Hotel/Motel Tax Payments not deposited into the Tax Payments Fund but to be treated as though held in the Tax Payments Fund) after deducting the payments made pursuant to subparts (i) through and including (iv) of this Section 4.2(b); provided, however, each such monthly transfer shall be subject to an annual accounting at the end of each Fiscal Year to determine the amount that would have remained in the Tax Payments Fund at the end of each Fiscal Year after accounting for and including in such calculations any Cities Hotel/Motel Tax Payments deposited into the Operating Revenue Fund and any other Cities Hotel/Motel Tax Payments not deposited into the Tax Payments Fund but to be treated as though held in the Tax Payments Fund, and also after deducting all amounts paid pursuant to subparts (i) through and including (iv) of this Section 4.2(b) as if no other amounts had been withdrawn from the Tax Payments Fund (such Fiscal Year end remaining balance amount for each respective Fiscal Year is referred to herein as the “Annual Excess Tax Payments,” as more fully defined in Article I hereof), which calculation shall be done consistent with the example set forth in the Annual Excess Tax Payments Calculation Spreadsheet attached hereto as Exhibit A, provided, however, in the event of any conflict between the terms of this Agreement and the example set forth in Exhibit A hereto, the terms of this Agreement shall control; and the Authority shall be entitled to transfer to the R&E Fund with respect to each Fiscal Year no more than 62.5% of the Annual Excess Tax Payments (such 62.5% amount for each respective Fiscal Year is referred to herein as the “Authority’s Excess Portion,” as more fully defined in Article I hereof); provided further, however, in each Fiscal Year commencing with respect to Fiscal Year 2024, the amount the Authority may transfer to the R&E Fund shall be further restricted by and shall not exceed the amount equal to (x) 1.25 multiplied by (y) the highest Fiscal Year total County/Cities Hotel/Motel Tax Payments paid to the Authority or Senior Lien Trustee on behalf of the Authority by the County and the Cities plus the total County Liquor-by-the-Drink Tax Payments, in each case in the five most recent Fiscal Years (the “Cap on Authority’s Excess Portion,” as more fully defined in Article I hereof); and

(vi) Sixth, commencing with respect to Fiscal Year 2024 and continuing throughout the Term of this Agreement, annually no later than sixty (60) days after the end of each such Fiscal Year, (w) payment to the County of the County’s Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments (the amount of such County’s Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments for each respective Fiscal Year is referred to herein as the “County’s Excess Portion,” as more fully defined in Article I hereof), (x) payment to each of the Conforming Cities their respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments, if due under a Conforming City Operating Agreement (the amount of the City’s Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments for each respective Fiscal Year is referred to herein as the “City’s Excess Portion,” as more fully described in Article I hereof), (y) payment to the County of its Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap in such Fiscal Year, and (z) if and to the extent applicable under a Conforming City Operating Agreement, payment to each Conforming City of its respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap; provided the Authority will apply the remaining County Liquor-by-the-Drink Tax Payments funds first and then to the extent necessary apply the County Hotel/Motel Tax Payments funds to pay to the County its pro-rata share of the Annual Excess Tax Payments Above the Cap; and provided further, the County’s Excess Portion shall not be paid to the County and no portion of the Annual Excess Tax Payments shall be paid to any of the Conforming Cities to the extent such payment would result in the balance in the Renewal and Expansion Fund being less than the R&E Minimum Balance Requirement determined in accordance with the limitations set forth in Section 4.3(d)(vi) hereof.

Notwithstanding the foregoing, (A) the payments under subpart (iv) of this Section 4.2(b) of expenses relating to the promotion of destination tourism including, but not limited to, the cost of promoting tourism, convention or trade shows in the boundaries of the County, whether paid under an agreement or contract with CT&T or another third party (excluding any amounts owed to the County under a contract with the County), shall be subordinate to all County Monthly Contract Payments and all County Collection Fees payable to the County under this Agreement and shall not be considered a cost of operating and maintaining the Galleria Project or any other Financed Project under Section 3.2 hereof or under any other agreement between the Authority and the County; and (B) in the event the County is not paid in full when due the County Monthly Contract Payment or not paid in full when due the County Collection Fee and for so long as such amounts or any portion thereof remain unpaid, the Authority shall not pay or transfer from the Tax Payments Fund or otherwise pay any funds attributable to County Tax Payments (x) any amounts under subpart (iv) of this Section 4.2(b) or (y) any amounts under subpart (v) of this Section 4.2(b), unless such expenditures are specifically approved as set forth in the County Operating Agreement.

(c) Attached hereto as **Exhibit A** is the Annual Excess Tax Payments Calculation Spreadsheet.

(d) In no event shall funds in the Tax Payments Fund be applied except as explicitly set forth in this Section 4.2.

Section 4.3 Renewal and Expansion Fund

(a) The Authority shall create and maintain a special fund designated as “Cobb-Marietta Coliseum and Exhibit Hall Authority–Galleria Renewal and Expansion Fund” separate and apart from other funds of the Authority.

(b) Pursuant to Section 4.1(b)(iv) hereof and, only if required under any Original City Operating Agreement in effect and unmodified as of September 1, 2023 and only for so long as such Original City Operating Agreement remains in effect in accordance with its original terms and unmodified, pursuant to any such Original Operating Agreement during the Gap Period, the Authority shall transfer to the Renewal and Expansion Fund monthly all money remaining in the Operating Revenue Fund (except the Project Working Capital Reserve amount and except revenues received but not earned during the respective period).

(c) No withdrawal shall be made from the Renewal and Expansion Fund except as permitted under this Section 4.3(c) unless the remaining balance in the Renewal and Expansion Fund will equal no less than \$4,000,000 (the “R&E Minimum Balance Requirement”). In the event any withdrawal from the Renewal and Expansion Fund would cause the balance in the Renewal and Expansion Fund to be less than the R&E Minimum Balance Requirement, then withdrawals shall be made only for the purposes set forth in subparts (i) through and including (iii) of Section 4.3(d) hereof and transfers to the Operating Revenues Fund shall be made only to pay specific operating expenses expressly determined by the Authority to be necessary for required operations after depletion of the Project Working Capital Reserve and only to pay specific capital expenditures expressly determined by the Authority to be necessary for required emergency capital improvements or emergency repairs. In the event the R&E Minimum Balance Requirement is satisfied and will remain satisfied following proposed withdrawals, then the Authority shall disburse funds from the Renewal and Expansion Fund in accordance with all subparts of Section 4.3(d) hereof.

(d) The Authority shall disburse funds from the Renewal and Expansion Fund for the purposes set forth in subparts (i), (ii) and (iii) when provided hereinafter in the stated order of priority; and to the extent of available money in the Renewal and Expansion Fund and subject to and in accordance with Section 4.3(c) hereof, the Authority may disburse funds from the Renewal and Expansion Fund for any purpose set forth hereinafter:

(i) First, on or before the 20th day of any applicable calendar month, payment to the Senior Lien Trustee for deposit into the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture in the event that in any month there is a deficiency in the amount required to be on deposit in the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture;

(ii) Second, on or before the 25th day of any applicable calendar month, payment of any County Monthly Contract Payment payable to the County that has not been paid in full when due and any similar monthly contract payment due to any Conforming Cities in accordance with the Conforming Cities Operating Agreements that has not been paid in full when due;

(iii) Third, on or before the 25th day of any applicable calendar month, payment of any County Collection Fee payable to the County that has not been paid in full when due and any similar collection fee due to any Conforming Cities in accordance with the Conforming Cities Operating Agreements that has not been paid in full when due;

(iv) Fourth, transfer to the Operating Revenue Fund amounts required to pay operating and maintenance expenses of the Galleria Project and any other Financed Project to the extent money in the Operating Revenue Fund are not sufficient for such purpose;

(v) Fifth, in case of an emergency having a major effect upon a Financed Project caused by some extraordinary occurrence that makes it necessary to use such funds for the alleviation or removal of such effects and insufficient money is available in the Operating Revenue Fund to meet such emergency; and

(vi) Sixth, payment of the costs of capital improvements, replacements, additions, expansions, renovations and improvements and acquiring equipment and paying the cost of any architectural or engineering studies, surveys or plans and specifications pertaining to the future development or expansion of the Galleria Project or any other Financed Project, provided, however, such expenditures shall not reduce the balance in the R&E Fund to less the R&E Minimum Balance Requirement and provided further, however, no payment shall be made under this subsection (vi) if the making of such payment would jeopardize the ability of the Authority to make the payment in full of (w) the County's Excess Portion of the Annual Excess Tax Payments, (x) the Cities' respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments, (y) the County's Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap, and (z) the Cities' respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap, all in accordance with Section 4.2(b)(vi) hereof, and provided further, however, specific capital expenditures expressly determined by the Authority to be necessary for required emergency capital improvements or emergency repairs shall be an exception to the provisions of preceding provisos in this subsection (vi).

Section 4.4 Payment of City's Monthly Contract Payments. The Authority shall repay to the City monthly, on or before the 25th day of each calendar month, an amount equal to 40 percent of the Cities Hotel/Motel Tax Payments paid by the City pursuant to Section 4.4(a) or 4.4(b) of the Funding Agreement (such 40% being the "City Monthly Contract Payment"). In the event that an increase in Hotel/Motel Tax revenues is payable due to an expansion of the corporate limits of the City as provided in Section 4.3 of the Funding Agreement, the amount payable to City as the City Monthly Contract Payment shall be increased to an amount equal to 62.5 percent of the Cities Hotel/Motel Tax Payments paid by the City which is attributable solely to the Hotel/Motel Tax revenues collected within the additional area included within the City. The Authority shall make such payment to the City from money on deposit in the Tax Payments Fund in accordance with Section 4.2(b)(ii) hereof promptly following the Authority's

payment to the Senior Lien Trustee in accordance with Section 4.2(b)(i) or if necessary from money on deposit in the Renewal and Expansion Fund in accordance with Section 4.3(d)(ii) hereof. Any deficiency in the amount of the City Monthly Contract Payment to the City required under this Section 4.4 shall remain due to the City, shall accumulate and shall be added to the next succeeding payment due to the City under this Section 4.4 until paid in full.

Section 4.5 **Payment of City's Collection Fee.** The Authority shall pay to the City monthly, on or before the 25th day of each calendar month, a collection fee for costs incurred by the City in connection with levying, collecting and administering the Hotel/Motel Tax. The Authority shall make the payment from money on deposit in the Tax Payments Fund in accordance with Section 4.2(b)(iii) hereof promptly following the Authority's payment to the Senior Lien Trustee in accordance with Section 4.2(b)(i) or if necessary from money on deposit in the Renewal and Expansion Fund in accordance with Section 4.3(d)(iii) hereof. The collection fee payable to the City hereunder shall be in an amount equal to (x) all Cities Hotel/Motel Tax Payments paid by the City during each applicable calendar month, (y) less amounts paid to the City pursuant to Section 4.4 hereof during such month, and (z) multiplied by five percent (5%). Any deficiency in the amount of the payment to the City required under this Section 4.5 shall remain due to the City, shall accumulate and shall be added to the next succeeding collection fee payment due to the City under this Section 4.5 until paid in full.

ARTICLE V

SPECIAL COVENANTS OF THE CITY AND THE AUTHORITY

Section 5.1 **Hotel/Motel Tax Budget Plan, and Quarterly and Annual Accounting.**

(a) In accordance with O.C.G.A. 48-13-51(a)(9)(A), prior to the commencement of each Fiscal Year during the Term of this Agreement, pursuant to the Hotel/Motel Tax Law the City shall adopt a hotel/motel tax budget plan specifying how the City's anticipated Hotel/Motel Tax receipts will be expended in accordance with the expenditure requirements of O.C.G.A. 48-13-51(a)(5.1) during the upcoming Fiscal Year. Prior to adoption of the budget plan, the City shall obtain and the Authority shall provide a budget for expenditures to be made by the Authority and such budget shall be a part of the City's budget plan.

(b) In accordance with O.C.G.A. 48-13-51(a)(9)(B)(i), the City's determination of whether the expenditure requirement under O.C.G.A. 48-13-51(a)(5.1) was satisfied for each Fiscal Year shall be prominently reflected in the audit report of the City. The calculation for determining whether the expenditure requirements have been met shall be determined by (i) calculating the amount of funds expended or contractually committed for expenditure during the Fiscal Year and (ii) expressing such amount as a percentage of Hotel/Motel Tax receipts during the Fiscal Year.

Section 5.2 **Reports to Department of Community Affairs.** The City shall file annually with the State Department of Community Affairs a report specifying the rate of taxation and amounts collected and expended pursuant to the Hotel/Motel Tax Law and any other information which may be required by the Department of Community Affairs pursuant to the Hotel/Motel Tax Law.

ARTICLE VI

SPECIAL COVENANTS AND AGREEMENTS OF THE AUTHORITY

Section 6.1 **Release Covenant.** The Authority covenants and agrees with the City that the City shall not be liable for, and to the full extent permitted by law the Authority shall hold the City harmless

from, any and all claims by or on behalf of any person arising from: (1) the conduct, operation or management of, or from any work or thing done in or on, any Project; (ii) any condition of any Project, (iii) any act of negligence, malfeasance or misconduct of the Authority or of any agents, contractors, servants, employees or licensees of the Authority or of any lessee or tenant of the Authority; and (iv) any loss or damage to property or any injury to or death of any persons occurring on or about or resulting from any defect in any Project.

Section 6.2 Financial Statements. The Authority will have a certified audit performed at the end of each Fiscal Year by a certified public accountant and will cause such audit to be completed and delivered to the City promptly upon completion and in any event within 180 days after the end of the Fiscal Year. The Authority will furnish the City with a copy of its audited financial statements promptly upon completion of the annual audit.

Section 6.3 Financial Information. The Authority shall furnish to the City upon written request any unaudited monthly financial statements prepared by or on behalf of the Authority's staff for presentation to the Authority.

Section 6.4 Rules and Regulations. The Authority covenants and agrees that (i) it will enforce or cause to be enforced reasonable rules and regulations governing the Galleria Project and all other Financed Projects and the operation thereof, (ii) all compensation, salaries, bonuses, fees and wages paid or caused to be paid by it in connection with the operation, repair and maintenance of the Financed Project will be reasonable, (iii) no more persons will be employed than are necessary, (iv) that it will operate in an efficient and economical manner, (v) it will at all times maintain or cause to be maintained the Galleria Project and all other Financed Projects in good repair and in sound operating condition, and will make or cause to be made all necessary repairs, renewals and replacements thereto, and (vi) it will comply or cause to be complied with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to such undertaking and enterprise.

Section 6.5 Contracting Procedure. The Authority hereby covenants and agrees that any contract relating to the acquisition, construction, installation, extension, improvement, maintenance or repair of the Financed Project shall be procured in accordance with applicable law.

Section 6.6 Granting of Easements. The Authority may at any time or times cause to be granted easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Galleria Project and all other Financed Projects and may cause to be released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Galleria Project and all other Financed Projects for reasonable and adequate consideration. In connection with any such grant or any sale permitted hereunder, if any, the Authority agrees that it shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or asset.

Section 6.7 Discharge of Liens. The Authority will promptly pay, or cause to be discharged, or will make adequate provisions to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands, which, if unpaid, might by law become a lien upon the Galleria Project or any other Financed Project, or any part thereof, or upon the revenues therefrom; provided, however, that nothing contained in this Section shall require the Authority to pay, or cause to be discharged, or make provision

for, any such lien or charge, so long as the validity thereof shall be contested in good faith with due diligence and by appropriate legal proceedings.

Section 6.8 Maintenance of Insurance; Damage; Destruction or Condemnation of Financed Projects.

(a) The Authority will carry adequate public liability, fidelity, and property insurance with respect to the Galleria Project and all other Financed Projects, with reasonable deductible amounts as applicable; all such policies shall be for the benefit of and made payable to the Authority; and the Authority will provide copies of such policies to the City upon written request.

(b) The proceeds of the Authority's property insurance coverage shall be available for and shall be applied to the repair and replacement of the damaged or destroyed property; provided, that in the event the Authority shall obtain a certification of an independent architect or engineer to the effect that the applicable Project cannot be repaired to a condition permitting its operation substantially at the level of operation prior to such damage or destruction, then the proceeds of such coverage shall be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay principal and interest on the applicable Senior Lien Bonds then outstanding or, if such certification is to the effect that the applicable Project may be operated substantially at the level of operation prior to such damage or destruction without such repair or replacement, then the proceeds may be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Senior Lien Bonds on the next succeeding payment date. Except to the extent such proceeds are payable to third parties, the proceeds of the performance and payment bonds or other insurance during construction shall be available for and shall, to the extent necessary, be applied to the completion of the applicable Project and of any renewal, replacement, addition, extension, or improvement to such Project in connection with which such coverage was obtained, but to the extent not so used shall be deposited in, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Senior Lien Bonds on the next succeeding payment date.

(c) All insurance policies or other evidence of the coverage required hereunder shall be open to inspection of the City and its respective duly authorized agents, accountants, attorneys, experts and representatives at reasonable times and upon reasonable request.

(d) In the event the Galleria Project or any other Financed Project or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Authority shall apply the proceeds of any such condemnation award to restore the applicable Project to substantially the same condition as before such taking; provided, that if the Authority shall obtain a certification of an independent architect or engineer to the effect that such Project cannot be restored to a condition permitting its operation at substantially the level of operation prior to such taking, then the proceeds of such condemnation award shall be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay principal and interest on the applicable Senior Lien Bonds then outstanding or, if such certification is to the effect that such Project may be operated substantially at the level of operation prior to such taking without such restoration, then the proceeds of such condemnation award may be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Senior Lien Bonds on the next succeeding payment date.

Section 6.9 Books and Records. The Authority covenants that it will keep the funds and accounts of the Cities Hotel/Motel Tax Payments, the Senior Lien Bonds, and the Galleria Project and each Financed Project separate from all other funds and accounts of the Authority, or any of its departments, and that it will keep accurate records and accounts of all items of cost and all expenditures relating to the

Financed Projects, and of the revenues collected and the application thereof, and that it will keep said records and accounts with respect to its physical properties in such manner that it will be possible at all times to identify both the amounts and the terms of all additions and retirements. The City and its respective agents, accountants, attorneys, engineers, experts and representatives shall have the right, at reasonable times and upon reasonable notice, to inspect all books and records of the Authority, whether in the Authority's possession or otherwise accessible by the Authority, relating to the Cities Hotel/Motel Tax Payments, the Senior Lien Bonds, and the Galleria Project and all other Financed Projects.

Section 6.10 Access to the Project. The Authority agrees that the City and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Galleria Project and all other Financed Projects at all reasonable times and on reasonable notice.

Section 6.11 Encumbrance or Sale of any Portion of the Project. So long as any of the Senior Lien Bonds shall be outstanding and unpaid, the Authority will not encumber the Galleria Project or any other Financed Project or any part thereof, and it will not sell or otherwise dispose of any Project or any part thereof, except it may sell any Financed Project as a whole, or substantially as a whole, to the State, the County or the Cities or to any other public body or authority authorized to own or operate such Financed Project only if the proceeds of such sale will be at least sufficient to provide for the defeasance of all Senior Lien Bonds in accordance with the Senior Lien Indenture and to pay all amounts due to the City under this Agreement or the Funding Agreement, and provided that the proceeds of any such sale to the extent necessary shall be deposited with the Senior Lien Trustee in trust and applied by it to the defeasance of all Senior Lien Bonds in accordance with the Senior Lien Indenture and payment of all amounts due to the City. Nothing contained herein, however, shall preclude sale of a part of a Project (a) in the ordinary course of business with respect to equipment no longer needed for the operating of such Project, or (b) in the event the sale would not in any way materially adversely affect the operations or revenue producing capability of the Financed Project and the proceeds from such sale will be applied to payment of all amounts due to the City and the retirement of an agreed-upon pro-rata portion of the then outstanding Senior Lien Bonds (as agreed by the City and the Authority) or as otherwise expressly approved in writing by the City.

Section 6.12 Employment of Project Supervisor. The Authority will employ an experienced Project Supervisor during the construction of any additions, extensions or improvements to the Galleria Project or any other Financed Project for the purpose of supervising such construction of such Project and such additions, extensions and improvements thereof.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Effective Date and Term of Agreement. This Agreement shall be effective as of the Effective Date. The Term of this Agreement shall commence on the Effective Date and shall expire and terminate on the date of the first to occur of the following, in each case provided that all City's Excess Portion of all Annual Excess Tax Payments and all other amounts owed to the City under this Agreement or under the Funding Agreement have been paid in full (including, without limitation, the City's Excess Portion of the Annual Excess Tax Payments with respect to the Fiscal Year during which the Term ends): (i) the first date on which no Existing Senior Lien Bonds remain outstanding in the event no Additional Senior Lien Bonds have been issued in accordance with this Agreement and the Funding Agreement by September 30, 2026 or (ii) the first date on which no Additional Senior Lien Bonds remain outstanding, whether by full and final payment or by defeasance in accordance with the Senior Lien Indenture, which date shall be no later than the final maturity date of any Additional Senior Lien Bonds issued after the Effective Date hereof; provided, however, in no event shall the Term of this Agreement extend beyond October 1, 2053; and provided further, however, in no event shall the cumulative time period comprised of

the sum of (i) the length of the time period from the Effective Date to the date of termination of the last surviving provision of this Agreement plus (ii) the length of the time period from the Effective Date to the final termination date of the Original Operating Agreement exceed fifty (50) years.

Section 7.2 Independent Contractor. In performing this Agreement, the Authority is acting as an independent contractor. The City shall not have any power to control the means, methods or techniques by which the Authority undertakes the activities or projects contemplated by this Agreement, except as may be otherwise expressly provided in this Agreement.

Section 7.3 No Interest for City. By virtue of this Agreement, the City shall not have or hereafter acquire any legal or equitable interest of any nature in, under or to (i) any part of the property, real or personal, tangible or intangible, comprising or used in the Financed Projects, (ii) the leases, licenses, contracts, accounts or other intangible rights or obligations acquired or incurred by the Authority in connection with the acquisition, construction, improvement, equipping or operation of the Financed Projects, or (iii) the operating revenues of the Financed Projects except as otherwise agreed to between the City and the Authority.

Section 7.4 Third Party Beneficiaries. Nothing in this Agreement is intended or shall be deemed to confer any interest in this Agreement or benefit on persons not named parties to this Agreement.

Section 7.5 No Additional Waiver Implied by One Waiver. If any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.6 Amendment. This Agreement may be amended or supplemented only by a formal written amendment or supplement duly approved by the respective governing body of each party and duly executed on behalf of the Authority and the City. No consent or agreement of any person not a party to this Agreement (including the Senior Lien Trustee or Bondholders) shall be required for amendment of this Agreement.

Section 7.7 Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event the City is determined to have defaulted under any of the provisions of this Agreement and the Authority employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it shall on demand therefor pay to the Authority the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Authority.

(b) In the event the Authority is determined to have defaulted under any of the provisions of this Agreement and the City employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Authority herein contained, the Authority agrees that it shall on demand therefor pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

Section 7.8 Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered in person or when sent by registered courier or registered over-night delivery service or when mailed by registered or certified

mail, return receipt requested, in each case with postage or other charges prepaid, to the parties hereto at the following addresses or such other address designated by such party in writing:

Authority: Cobb-Marietta Coliseum and Exhibit Hall Authority
Two Galleria Parkway
Atlanta, Georgia 30339
Attention: General Manager/CEO

City: City of Smyrna
2800 King Street
Smyrna, Georgia 30080
Attention: City Administrator

Section 7.9 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns.

Section 7.10 Severability. If 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.

Section 7.11 Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.12 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 7.13 Law Governing this Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State. Jurisdiction and venue over any claim or dispute arising under this Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

Section 7.14 Prior Funding Agreements. Any and all prior agreements, leases, operating contracts, management contracts, or any other agreements or parts thereof in effect on or after the date of the Original Operating Agreement between the Authority and the City with respect to its Hotel/Motel Tax and the Galleria Project are hereby repealed and terminated and same shall be of no force and effect upon the execution, delivery and effectiveness of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Authority and the City have caused this Amended and Restated Galleria Operating Agreement to be executed and delivered by their respective duly authorized officers, and their respective seals to be hereunto affixed and attested by their duly authorized officers on the date(s) set forth below, all to be effective as of the Effective Date set forth hereinabove.

(AUTHORITY SEAL)

Attest:

Secretary-Treasurer

THE AUTHORITY:

**COBB-MARIETTA COLISEUM AND EXHIBIT
HALL AUTHORITY**

By: _____
Chairman

Date: _____

(CITY SEAL)

Attest:

City Clerk

THE CITY:

CITY OF SMYRNA, GEORGIA

By: _____
Mayor

Date: _____

