

## INTERGOVERNMENTAL ECONOMIC DEVELOPMENT CONTRACT

This INTERGOVERNMENTAL ECONOMIC DEVELOPMENT CONTRACT (this "Contract"), made and entered into as of August 1, 2014, by and between the City of Smyrna (the "City"), a municipal corporation duly created and existing under the laws of the State of Georgia, and the Downtown Smyrna Development Authority (the "Authority"), a public corporation duly created and existing under the laws of the State of Georgia;

### WITNESSETH:

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

### ARTICLE I

#### DEFINITIONS

Certain words and terms used in this Contract shall have the meanings given them in Section 17 of the Bond Purchase Agreement, which by this reference are incorporated herein. In addition to the words and terms defined elsewhere herein, the following words and terms shall have the meanings specified below, unless the context or use indicates another or different meaning or intent:

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

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

**"Additional Economic Development Contract"** means any Additional Contract that obligates the City to levy the municipal tax authorized by Section 48-5-350 of the Official Code

of Georgia Annotated or any successor provision, to provide revenues to fulfill the City's obligations under such Additional Contract.

**"Authority"** means the Downtown Smyrna Development Authority, a public corporation created and existing under the laws of the State of Georgia, and its successors and assigns.

**"Bond Purchase Agreement"** means the Bond Purchase Agreement, dated the date of its execution and delivery, between the Authority and the Bond Buyer, under the terms of which the Authority agreed to issue and sell the Series 2014 Bonds to the Bond Buyer and the Bond Buyer agreed to purchase the Series 2014 Bonds from the Issuer. The term Bond Purchase Agreement shall include any amendments or supplements thereto.

**"Bondholder"** means the Person in whose name the Bond is registered on the bond registration books kept and maintained by the Issuer.

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

**"Comprehensive Plan"** means the City of Smyrna Comprehensive Plan 2005 - 2030, dated August 20, 2007, prepared by Robert and Company, Atlanta, Georgia, as the same may be supplemented and amended from time to time.

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

**"Contracts"** means this Contract, the Prior Contracts, and all Additional Contracts.

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

**"Person"** means natural persons, firms, joint ventures, associations, trusts, partnerships, corporations, and public bodies.

**"Prior Contracts"** means collectively the Prior 2001 Contract and the Prior 2010 Contract.

**"Prior 2001 Contract"** means the Agreement of Sale, dated as of July 1, 2001, between the Authority and the City, as the same may be supplemented and amended from time to time in accordance with the provisions thereof.

**"Prior 2010 Contract"** means the Intergovernmental Economic Development Agreement, dated November 1, 2010, between the City and the Smyrna Downtown Area Development Corporation, as the same may be supplemented and amended from time to time in accordance with the provisions thereof.

**"Projects"** means collectively the Tax-Exempt Project and the Taxable Project.

**“Resolution”** means the Bond Resolution adopted by the Authority on July 15, 2014, as it may from time to time be modified, supplemented, or amended, authorizing the issuance and sale of the Series 2014 Bonds.

**“Series 2014 Bonds”** means collectively the Series 2014A Bond and the Series 2014B Bond.

**“Series 2014A Bond”** means the revenue bond designated “Downtown Smyrna Development Authority Taxable Economic Development Revenue Bond, Series 2014A,” dated the date hereof, in the principal amount of \$2,320,000, to be issued pursuant to the Resolution.

**“Series 2014B Bond”** means the revenue bond designated “Downtown Smyrna Development Authority Economic Development Revenue Bond, Series 2014B,” dated the date hereof, in the principal amount of \$3,855,000, to be issued pursuant to the Resolution.

**“Site”** means the real estate described in Exhibit A attached hereto, which, by this reference thereto, is incorporated herein, as the same may be amended or supplemented pursuant to the Resolution.

**“Tax-Exempt Project”** means improvements necessary for public infrastructure development, including the construction and paving of roads and sidewalks and the construction and installation of water and sewer infrastructure, and any and all other facilities, buildings, improvements, fixtures, equipment, and personal property used or usable in connection therewith, located or to be located on the Site, to be financed with the proceeds of the Series 2014B Bond.

**“Taxable Project”** means improvements necessary for future real estate development for private use, including grading and the construction and installation of a stormwater retention facility, and any and all other facilities, buildings, improvements, fixtures, equipment, and personal property used or usable in connection therewith, located or to be located on the Site, to be financed with the proceeds of the Series 2014A Bond.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations of the City.** The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) There exists a need in the City to develop trade, commerce, industry, and employment opportunities, and the acquisition, construction, and development of the Projects as herein contemplated is a desirable method to meet such need.

(b) The Authority has represented to the City that the assistance by the City in financing the acquisition, construction, and development of the Projects by the Authority is of critical

importance to the Authority in making the determination as to the feasibility of the Authority acquiring, constructing, and developing the Projects.

(c) The City has determined that the acquisition, construction, and development of the Projects by the Authority would be in the best interest of the City and the residents thereof and that the same will achieve valid public purposes and will develop trade, commerce, industry, and employment opportunities for the benefit of the City and the residents thereof.

(d) The City has determined that the best method of accomplishing and financing the cost of the acquisition, construction, and development of the Projects is for the same to be accomplished by the Authority with the cooperation of the City in the manner provided for in this Contract.

(e) The City is authorized by Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia of 1983, 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 but such contracts must deal with activities, services, or facilities that the contracting parties are authorized by law to undertake or provide. In addition, the City is authorized by Section 48-5-350 of the Official Code of Georgia Annotated to levy and collect municipal taxes upon all taxable property within the limits of the City to provide for financial assistance to the Authority for the purpose of developing trade, commerce, industry, and employment opportunities; provided the tax levied for the purposes provided in that code section shall not exceed three (3) mills per dollar upon the assessed value of the property.

(f) Article IX, Section VI, Paragraph III of the Constitution of the State of Georgia of 1983 provides that the development of trade, commerce, industry, and employment opportunities is a public purpose vital to the welfare of the people of the State of Georgia.

(g) The City has the power to enter into this Contract and perform all obligations contained herein, and has, by proper action, duly authorized the execution and delivery of this Contract.

(h) The City hereby warrants that it is not subject to any charter or contractual or other limitation or provision of any nature whatsoever that in any way limits, restricts, or prevents it from entering into this Contract and performing its obligations hereunder.

(i) The City represents that, except for the Prior 2010 Contract, there is not presently in force and effect any other contract or agreement that obligates the City to levy the three (3) mill municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated, to provide revenues to fulfill the City's obligations under such contract or agreement. The City further represents that, except for the Prior Contracts, there is not presently in force and effect any other contract or agreement binding the City pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, pursuant to the terms of which a payment obligation exists from the City to the other party to such contract, which payment obligation is subject to the fifteen (15) mill limit prescribed by the City's Charter. The Authority and the City have obtained documentation evidencing that the conditions of Section 3.02(e) of the Prior 2001 Contract and Section 5.02(e) of the Prior 2010 Contract have been satisfied, in order to permit

the Authority and the City to enter into this Contract, which documentation is attached to this Contract as Exhibit B.

**Section 2.2. Representations of the Authority.** The Authority makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Authority is a public corporation duly created and existing under the laws of the State of Georgia for the purpose of developing the downtown Smyrna area. The Act authorizes the Authority to borrow money and to issue its revenue bonds and to use the proceeds thereof for the purpose of paying all or any part of the cost of any “project,” which includes the acquisition, construction, remodeling, altering, renovating, equipping, maintaining, and operating of buildings, both private and public, and the usual and convenient facilities appertaining to such undertakings and extension and improvement of such buildings; the acquisition of parking facilities or parking areas in connection therewith; and the acquisition of the necessary property therefor, both real and personal. The Act also authorizes the Authority to develop, construct, erect, purchase, acquire, own, repair, remodel, renovate, rehabilitate, maintain, extend, improve, sell, equip, expand, add to, operate, or manage projects. The Act also authorizes the Authority (1) to make and execute contracts and other instruments necessary or convenient to exercise the powers of the Authority, and (2) to contract for any period not exceeding 50 years with any municipality of the State of Georgia for the use by any municipality of any facilities or services of the Authority, provided that such contracts shall deal with such activities and transactions as the Authority and any such municipality with which the Authority contracts are by law authorized to undertake. The Act also authorizes the Authority, as security for repayment of any revenue bonds of the Authority, to pledge, convey, assign, hypothecate, or otherwise encumber any property of the Authority, real or personal, and to execute any agreement for the sale of the Authority’s revenue bonds, security agreement, assignment, or other instrument as may be necessary or desirable in the judgment of the Authority to secure any such revenue bonds. The Authority has found that the Projects constitute “project” within the meaning of that term as defined in the Act.

(b) The Authority has determined that the issuance of the Series 2014 Bonds and the construction and development of the Projects as contemplated herein is a lawful and valid public purpose in that it will develop the downtown Smyrna area.

(c) The Authority has the power to enter into this Contract and perform all obligations contained herein, and has, by proper action, been duly authorized to execute and deliver this Contract.

(d) The Authority hereby warrants that it is not subject to any bylaw or contractual or other limitation or provision of any nature whatsoever that in any way limits, restricts, or prevents it from entering into this Contract and performing its obligations hereunder.

(e) The Authority has found and determined and does hereby declare that the most feasible way to finance a portion of the cost of acquiring, constructing, and developing the Projects and to achieve the public purposes referred to in this Contract is to issue the Series 2014 Bonds and to pledge to the Bondholders the payments that the City has agreed to make to the Authority pursuant to the provisions of Section 4.8 of this Contract.

## ARTICLE III

### TERM OF CONTRACT; CONTRACT AS SECURITY FOR BONDS

**Section 3.1. Term.** The term of this Contract shall commence with the execution and delivery hereof and shall extend until the principal of, premium, if any, and interest on the Series 2014 Bonds have been paid in full, but in no event shall the term hereof exceed fifty years from the date hereof.

**Section 3.2. This Contract as Security for the Series 2014 Bonds.** The parties hereto agree and intend that:

(a) This Contract shall constitute security for the benefit of the Bondholders and the obligations of the City hereunder shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim, except for payment, it may otherwise have against the Authority. The City agrees that it shall not (i) withhold, suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue any payments provided for in Section 5.1 hereof, (ii) fail to observe any of its other agreements contained in this Contract, or (iii) terminate its obligations under this Contract for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Authority to acquire, construct, or develop the Projects, any change or delay in the time of availability of the Projects, any acts or circumstances that may impair or preclude the use or possession of the Projects, any defect in the title, merchantability, fitness, or condition of the Projects or in the suitability of the Projects for the Authority's purposes or needs, failure of consideration, any declaration or finding that any of the Series 2014 Bonds are unenforceable or invalid, the invalidity of any provision of this Contract, any acts or circumstances that may constitute an eviction or constructive eviction, the taking by eminent domain of title to or the use of all or any part of the Projects, 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 thereof or in the rules or regulations of any governmental authority, or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Contract. Nothing contained in this Section 3.2(a) shall be construed to release the Authority from the performance of any of the agreements on its part herein contained. In the event the Authority should fail to perform any such agreement on its part, the City may institute such action against the Authority as the City may deem necessary to compel performance so long as such action does not abrogate the City's obligations hereunder. The Authority hereby agrees that it shall not take or omit to take any action that would cause this Contract to be terminated.

(b) The payments to be made hereunder by the City to the Authority will be assigned and pledged by the Authority to the Bondholders pursuant to the Resolution.

(c) Following the issuance of the Series 2014 Bonds, the payments to be made to the Authority by the City under the provisions of Section 4.8 of this Contract shall be made directly to the Custodian of the Sinking Fund for the account of the Authority.

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

(e) The Authority may collaterally assign, grant a security interest in, or otherwise collaterally transfer its rights in this Contract to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to the Authority herein or otherwise. It is understood and agreed that the Authority, contemporaneously with the execution and delivery of this Contract, will collaterally assign its rights under and grant a security interest in its right, title, and interest in this Contract to the Bondholders pursuant to the Resolution, and the City hereby consents to the assignment and grant of the security interest. Upon the issuance and delivery of the Series 2014 Bonds, all appointments, designations, representations, warranties, covenants, assurances, remedies, title, interest, privileges, permits, licenses, and rights of every kind whatsoever herein conferred upon the Authority shall be deemed to be conferred also upon the Bondholders, and any reference herein to the Authority shall be deemed, with the necessary changes in detail, to include the Bondholders, and the Bondholders are deemed to be and are third party beneficiaries of the representations, covenants, and agreements of the City herein contained.

#### ARTICLE IV

#### AUTHORITY'S AND CITY'S OBLIGATIONS HEREUNDER

**Section 4.1. Construction and Development of the Projects.** The Authority agrees to use its best efforts to construct and develop the Projects. The Authority will not permit the construction and development of the Projects to be accomplished in any manner that is not in conformity with the Comprehensive Plan.

**Section 4.2. Issuance of Series 2014 Bonds; Use of Bond Proceeds.** The Authority agrees that simultaneously with the execution and delivery hereof it will issue the Series 2014 Bonds containing the terms, including principal amount, interest rates, and maturities, set forth in the Bond Purchase Agreement, for the purpose of financing of the costs of the Projects. The Authority hereby covenants and agrees that it will apply the proceeds derived from the sale of the Series 2014A Bond to finance the Taxable Project, and will apply the proceeds derived from the sale of the Series 2014B Bond to finance the Tax-Exempt Project.

**Section 4.3. Ownership of The Tax Exempt Project.** The Authority agrees that throughout the term of this Contract title to the Tax-Exempt Project shall be vested in and shall be the sole property of the Authority, subject to any liens or leases that the Authority, with the written consent of the City, may enter into during the term of this Contract. It is anticipated that the components of the Taxable Project will be sold by the Authority to the private developer of the Site. The Authority shall, as directed by the City, negotiate sales and leases of portions of the Taxable Project and work with prospective purchasers and prospective tenants of portions of the Taxable Project upon such terms and conditions as are directed by the City. The Authority shall investigate and make financial analyses and recommendations to the City with respect to all proposals submitted by such prospective purchasers or tenants desiring to purchase or lease

portions of the Taxable Project. The Authority agrees that the proceeds of any sale, lease, or other disposition of any portion of the Projects shall be deposited or disposed of as directed by the City (including, if directed by the City, transferred to the City). The City agrees that the sale, lease, or other disposition of all or any portion of the Projects or any interest therein shall not affect its obligations under this Contract.

**Section 4.4. Application of Moneys in the Project Funds.** Pursuant to the Bond Purchase Agreement, the Authority shall authorize and direct the Depository to use the moneys in the Project Funds for the following purposes (but for no other purposes):

(a) from the 2014A Project Fund for payment of any costs and expenses relating to the Taxable Project that would constitute a “cost of the project” permitted to be paid by the Authority under the Act; and

(b) from the 2014B Project Fund for payment of any costs and expenses relating to the Tax-Exempt Project that would constitute a “cost of the project” permitted to be paid by the Authority under the Act; and

(c) all proceeds of each Bond remaining in the respective Project Fund after August 1, 2017, less amounts retained or set aside to meet costs not then due and payable or that are being contested, shall be used to redeem the applicable Bond.

**Section 4.5. Disbursements from the Project Funds.** All disbursements from the respective Project Funds shall be made upon draft, signed by the Authorized Authority Representative, but before they shall sign any such draft, there shall be filed with the Depository:

(a) A requisition for such payment (the above-mentioned draft may be deemed a requisition for the purpose of this Section 4.5), stating each amount to be paid and the name of the person to whom payment is due.

(b) A certificate executed by the Authorized Authority Representative and the Authorized City Representative attached to the requisition and certifying:

(1) that an obligation in the stated amount has been incurred by the Authority and that the same is a proper charge against the Project Fund and has not been paid and stating that the bill or statement of account for such obligation, or a copy thereof, is on file in the office of the City;

(2) that the signers have no notice of any vendor’s, mechanic’s, or other liens or rights to liens, chattel mortgages, or conditional sales contracts that should be satisfied or discharged before such payment is made; and

(3) that such requisition contains no item representing payment on account of any retained percentages that the Authority is, at the date of any such certificate, entitled to retain.

**Section 4.6. Investment of Project Funds.** Subject to Section 5.3 of the Bond Purchase Agreement and Section 4.7 hereof, any moneys held as a part of the respective Project Funds

shall be invested or reinvested by the Depository at the written direction of the Authorized City Representative in such Permitted Investments as may be designated by the City. The Depository may make any and all such investments through its own bond or investment department or through its broker-dealer affiliate.

The investments so purchased shall be held by the Depository and shall be deemed at all times a part of the respective Project Fund, and the interest accruing thereon and any profit realized therefrom shall be credited to the respective Project Fund, and any losses resulting from such investments shall be charged to the respective Project Fund.

**Section 4.7. Special Investment Covenants.** The Authority and the City each covenant that it will not directly or indirectly use or permit the use of any proceeds (as defined in the Regulations) of the Series 2014B Bond or any other funds of the Authority or the City, or take or omit to take any action, or direct the Depository to invest any funds held by it, in such manner as will, or allow any “related party” (as defined in Section 1.150 1(b) of the Regulations) to enter into any arrangement, formal or informal, as will, cause the Series 2014B Bond to be “federally guaranteed”, as such term is used and defined in Section 149(b) of the Code, or to be an “arbitrage bond” within the meaning of Section 148 of the Code, and any Regulations proposed or promulgated in connection therewith. To that end, the Authority and the City shall comply with all requirements of Section 149(b) and Section 148 of the Code to the extent applicable to the Series 2014B Bond. In the event that at any time the Authority or the City is of the opinion that for purposes of this Section 4.7 it is necessary to dispose of any investment or to restrict or limit the yield on any investment held under the Bond Documents or otherwise, the Authority or the City, as the case may be, shall so instruct the Depository in writing.

**Section 4.8. City’s Payment Obligations.** In order to provide financial assistance to the Authority for the purpose of developing trade, commerce, industry, and employment opportunities, the City agrees that:

(a) Until the principal of, premium, if any, and interest on the Series 2014 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Resolution, the City will pay to the Authority, by making such payments directly to the Custodian for the account of the Authority for deposit in the Sinking Fund, on or before January 31, 2015, and on or before each July 31 or January 31 thereafter, as the case may be, an amount sufficient, when added to funds held at the time of such payment in the Sinking Fund, to cause the balance held therein to equal the full amount of principal of, premium, if any, and interest coming due on the Series 2014 Bonds (whether by mandatory redemption, maturity, or otherwise) on the next succeeding Interest Payment Date, whichever is closer, as provided in the Resolution.

(b) The provisions of paragraph (a) above to the contrary notwithstanding, if, for any reason, on any Interest Payment Date and any redemption date with respect to the Series 2014 Bonds, there is not on deposit in the Sinking Fund moneys sufficient to pay the total principal, interest, and premium, if any, coming due on the Series 2014 Bonds on such Interest Payment Date or redemption date (whether by mandatory redemption, maturity, or otherwise), the City shall on such date pay to the Authority, by making such payments directly to the Custodian for the account of the Authority for deposit into the Sinking Fund, an amount equal to the amount by

which the total principal, interest, and premium coming due on the Series 2014 Bonds (whether by mandatory redemption, maturity, or otherwise) on the next Interest Payment Date or redemption date exceeds the amount in the Sinking Fund (and not being held for the payment of Bonds not yet presented for payment).

(c) It will also pay to the Authority an amount equal to (i) any costs incurred by the Authority in connection with the issuance of any series of Bonds to the extent such costs are not paid from proceeds of such Bonds, and (ii) the fees and expenses of the Bond Registrar and the Paying Agent if the Authority is unable to pay such fees and expenses from the revenues derived from the Projects.

**Section 4.9. Source of Funds for City's Payment Obligations; Limitations on Additional Contracts.** (a) The obligation of the City to make payments under this Contract shall constitute a general obligation of the City, payable out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds). The City covenants and agrees that it shall, to the extent necessary, levy an annual ad valorem tax on all taxable property located within the corporate limits of the City, as now existent and as the same may hereafter be extended, at such rate or rates within the three (3) mill limit authorized pursuant to Section 48-5-350 of the Official Code of Georgia Annotated for payments of debt service on the Series 2014A Bond and within the fifteen (15) mill limit prescribed by Section 50 of the City's Charter for payments of debt service on the Series 2014 Bonds, or within such greater millage as may hereafter be prescribed by applicable law, as may be necessary to produce in each year revenues that will be sufficient to fulfill the City's obligations under this Contract, from which revenues the City agrees to appropriate sums sufficient to pay in full when due all of the City's obligations under this Contract. The City hereby creates and grants a lien in favor of the Authority on any and all revenues realized by the City from such tax, to make the payments that are required under this Contract, which lien is superior to any that can hereafter be created, except that this lien may be extended to cover any Additional Contracts, as permitted by Section 5.2(d) and (e) hereof. Nothing herein contained, however, shall be construed as limiting the right of the City to make the payments called for by this Contract out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds).

(b) The City's obligation to levy an annual ad valorem tax within the three (3) mill limit authorized by Section 48-5-350 of the Official Code of Georgia Annotated for payments of debt service on the Series 2014A Bond and within the fifteen (15) mill limit prescribed by Section 50 of the City's Charter for payments of debt service on the Series 2014 Bonds, or such greater millage hereafter authorized by law, for the purpose of providing funds to meet the City's payment obligations under this Contract shall not be junior and subordinate, but shall be superior or equal to the City's obligation to levy an annual ad valorem tax at such rate or rates within such three (3) mill limit and such fifteen (15) mill limit, or such greater millage as hereinafter prescribed by law, pursuant to any applicable provisions of the Prior Contracts and any Additional Contract. It is expressly provided, however, that the City shall not be required to levy a tax in any year at a rate or rates exceeding in the aggregate the maximum three (3) mills now authorized by Section 48-5-350 of the Official Code of Georgia Annotated, the maximum fifteen (15) mill limit prescribed by Section 50 of the City's Charter, or any greater millage hereafter prescribed by law, in order to meet its obligations under the Contracts.

(c) So long as any of the Series 2014 Bonds are Outstanding, the City shall not:

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

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

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

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

(d) It is further expressly provided that so long as the Series 2014A Bond is Outstanding, the City shall not hereafter enter into any Additional Economic Development Contract for the purpose of debt service payments (including creation and maintenance of reserves therefor), unless the amount then capable of being produced by the levy of a municipal tax within the maximum millage then authorized under Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision on all taxable property within the corporate limits of the City, as shown by the latest tax digest available immediately preceding the execution of such Additional Economic Development Contract, is equal to at least one and twenty-five hundredths (1.25) times the maximum combined amount payable in any future Fiscal Year with

respect to debt service under all existing Contracts that obligate the City to levy the municipal tax authorized by Section 48-5-350 of the Official Code of Georgia Annotated or any successor provision and any such Additional Economic Development Contract. The City shall furnish the Authority, not less than five (5) nor more than sixty (60) days prior to the date of execution and delivery of any such Additional Economic Development Contract, a report of an independent certified public accountant to the effect that, based upon an affidavit of the Tax Commissioner of Cobb County as to the taxable value of property located within the corporate limits of the City, the requirements of this paragraph (d) have been met.

(e) It is further expressly provided that so long as any of the Series 2014 Bonds are Outstanding, the City shall not hereafter enter into any Additional Contract for the purpose of debt service payments (including creation and maintenance of reserves therefor), unless the amount then capable of being produced by the levy of an ad valorem tax within the maximum millage then prescribed by the City's Charter or any successor provision on all taxable property within the corporate limits of the City, as shown by the latest tax digest available immediately preceding the execution of such Additional Contract, is equal to at least one and twenty-five hundredths (1.25) times the maximum combined amount payable in any future Fiscal Year with respect to debt service under all existing Contracts and any such Additional Contract. The City shall furnish the Authority, not less than five (5) nor more than sixty (60) days prior to the date of execution and delivery of any such Additional Contract, a report of an independent certified public accountant to the effect that, based upon an affidavit of the Tax Commissioner of Cobb County as to the taxable value of property located within the corporate limits of the City, the requirements of this paragraph (e) have been met.

(f) Debt service for purposes of paragraphs (a), (d), and (e) of this Section 4.9 shall mean required payments of principal, including principal to be paid through mandatory redemption, interest, and amounts required to be paid for creation and maintenance of reasonable debt service reserves and to establish and maintain mandatory investment programs, less principal and interest received or to be received from investment of any of the foregoing amounts (except funds on hand or to be on hand in any debt service reserve) required to be applied to debt service in each Fiscal Year.

(g) It is further expressly provided that so long as any of the Series 2014 Bonds are Outstanding, the City shall provide the Bondholder with, or make available on its website, audited financial statements within 180 days of the end of the City's fiscal year and a copy of its annual budget within 30 days of its adoption.

## ARTICLE V

### ASSIGNMENT; PREPAYMENTS

**Section 5.1. No Assignment by City.** This Contract may not be sold, assigned, delegated, or encumbered by the City.

**Section 5.2. Redemption of Bonds.** The Authority, at the written request of the City at any time and if the Series 2014 Bonds are then callable or available for purchase, and if there are funds available therefor, shall forthwith take all steps that may be necessary under the applicable redemption or purchase provisions of the Resolution to effect redemption or purchase of all or part of the then outstanding Bonds, as may be specified by the City, on the earliest date on which such redemption or purchase may be made under such applicable provisions.

**Section 5.3. Prepayment.** There is expressly reserved to the City the right, and the City is authorized and permitted, at any time it may choose, to prepay all or any part of the amounts payable under Section 4.8 hereof, and the Authority agrees that the Custodian may accept such prepayments when the same are tendered by the City. All amounts so prepaid shall at the written direction of the City be credited toward the payments provided for in Section 4.8 hereof, in the order of their due dates, or applied to the retirement of either series of Bonds prior to maturity (either by redemption or purchase) in accordance with the Resolution. The City shall also have the right to surrender Bonds acquired by it in any manner whatsoever to the Authority for cancellation, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired and shall be allocated as credits to the payments provided for in Section 4.8 hereof as provided in the Resolution.

**Section 5.4. Option to Prepay the Payments and Redeem the Series 2014 Bonds at Prior Optional Redemption Dates.** The City shall also have the option to prepay the payments provided for in Section 4.8 hereof related to the Series 2014 Bonds and other amounts payable under this Contract in such manner and amounts as will enable the Authority to optionally redeem the Series 2014 Bonds prior to maturity, in whole or in part on any date, as provided in Section 7 of the Bond Purchase Agreement, or in whole or in part on any date, as provided in Section 7 of the Bond Purchase Agreement. Series 2014 Bonds redeemed pursuant to this Section shall be redeemed in accordance with the procedures set forth in Section 7 of the Bond Purchase Agreement. The payments provided for in Section 4.8 hereof and other amounts payable by the City in the event of its exercise of the option granted under this Section shall be (i), in the case of partial redemption, the amount necessary to pay principal, all interest to accrue to the redemption date, the applicable redemption premium if any, as provided in Section 7 of the Bond Purchase Agreement, as applicable, and any redemption expense, and (ii) in the case of a total redemption, the amounts set forth in Section 7 of the Bond Purchase Agreement.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1. Tax Covenants.** The Authority and the City covenant that they will not take or omit to take any action nor permit any action to be taken or omitted that would cause the interest on the Series 2014B Bond to become includable in the gross income of any owner thereof. The City further covenants and agrees that it shall comply with the representations and certifications it made in its City's Tax Certificate dated the date of issuance and delivery of the Series 2014B Bond and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

**Section 6.2. No Set-Off.** No breach, default, or failure by the Authority to comply with the provisions of this Contract shall permit an abatement or reduction in or setoff against the payments due from the City hereunder. Nothing in this Contract 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 Contract or (ii) to enforce the obligations of the Authority under this Contract. No dispute or litigation between the Authority and the City with respect to this Contract shall affect any party's duties to perform its obligations or its rights or remedies while such dispute or litigation is pending.

**Section 6.3. Governing Law.** This Contract and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed, and interpreted according to the laws of the State.

**Section 6.4. Entire Agreement.** This Contract expresses the entire understanding and all agreements between the parties hereto.

**Section 6.5. Severability.** If any provision of this Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

**Section 6.6. Survival of Warranties.** All agreements, representations, and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

**Section 6.7. Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**Section 6.8. Amendments in Writing.** No waiver, amendment, release, or modification of this Contract shall be established by conduct, custom, or course of dealing, but solely by an instrument in writing only executed by the parties hereto in accordance with the Resolution.

**Section 6.9. Notices.** Except as otherwise specifically provided herein, any notices, demands, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed given when the writing is delivered in person or five days after being mailed, if mailed, by certified mail, return receipt requested, postage prepaid, to the City and the Authority, respectively, at the addresses shown below or at such other addresses as may be furnished by the City or the Authority in writing from time to time:

CITY: City of Smyrna  
City Hall  
2800 King Street, S.E.  
Smyrna, Georgia 30080  
Attention: City Manager

AUTHORITY: Downtown Smyrna Development Authority  
2800 King Street, S.E.  
Smyrna, Georgia 30080  
Attention: Chairman

**Section 6.10. Limitation of Rights.** Nothing in this Contract, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy, or claim under this Contract.

[Signatures and Seals to Follow]

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

(SEAL)

**CITY OF SMYRNA**

Attest:

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

**DOWNTOWN SMYRNA DEVELOPMENT  
AUTHORITY**

Attest:

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary and Treasurer

**EXHIBIT A**

**DESCRIPTION OF SITE**

[Attached]