

## **BOND RESOLUTION**

A BOND RESOLUTION OF THE CITY OF SMYRNA AUTHORIZING, INTER ALIA, THE ISSUANCE OF ITS REFUNDING TAX ALLOCATION BOND (ATLANTA ROAD CORRIDOR PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT OF \$12,725,000

Adopted October 21, 2019

Exhibit "A" - TAD Resolution

Exhibit "B" - Consent Resolution of Cobb County, Georgia

Exhibit "C" - Form of Bond Purchase Agreement

## **BOND RESOLUTION**

**WHEREAS**, Article IX, Section II, Paragraph VII(b) of the Constitution of the State of Georgia (the “Constitutional Provision”) (1) authorized the General Assembly of the State of Georgia to grant to counties or municipalities for redevelopment purposes and in connection with redevelopment programs, as such purposes and programs are defined by general law, the power to issue tax allocation bonds, as defined by such law, and the power to incur other obligations, without either such bonds or obligations constituting debt within the meaning of Article IX, Section V of the Constitution of the State of Georgia, and the power to enter into contracts for any period not exceeding 30 years with private persons, firms, corporations, and business entities; (2) provided that such general law may authorize the use of county, municipal, and school tax funds, or any combination thereof, to fund such redevelopment purposes and programs, including the payment of debt service on tax allocation bonds, notwithstanding Article VIII, Section VI or any other provision of the Constitution of the State of Georgia and regardless of whether any county, municipality, or local board of education approved the use of such tax funds for such purposes and programs before January 1, 2009; (3) provided that no county, municipal, or school tax funds may be used for such purposes and programs without the approval by resolution of the applicable governing body of the county, municipality, or local board of education and that no school tax funds may be used for such purposes and programs except as authorized by general law after January 1, 2009; and (4) provided (a) that notwithstanding the grant of these powers pursuant to general law, no county or municipality may exercise these powers unless so authorized by local law and unless such powers are exercised in conformity with those terms and conditions for such exercise as established by that local law, (b) that the provisions of any such local law shall conform to those requirements established by general law regarding such powers, and (c) that no such local law, or any amendment thereto, shall become effective unless approved in a referendum by a majority of the qualified voters voting thereon in the county or municipality directly affected by that local law; and

**WHEREAS**, the General Assembly of the State of Georgia exercised the powers granted to it by the Constitutional Provision by enacting after January 1, 2009 an act known as the “Redevelopment Powers Law” (the “Redevelopment Powers Law”), which is codified as Chapter 44 of Title 36 of the Official Code of Georgia Annotated (the “Georgia Code”); and

**WHEREAS**, the General Assembly of the State of Georgia enacted a local law (2002 Ga. Laws 4687 to 4689, inclusive) authorizing the City of Smyrna (the “City”) to exercise all redevelopment and other powers under the Redevelopment Powers Law, which local law was approved in a referendum held on November 5, 2002, by a majority of the qualified voters of the City voting thereon; and

**WHEREAS**, the City, by a resolution adopted by its Mayor and Council on November 17, 2003 (the “TAD Resolution”), a true and correct copy of which is attached hereto as Exhibit A, created the Atlanta Road Corridor Redevelopment Area and Tax Allocation District Number One -- Atlanta Road Corridor (the “Tax Allocation District”) and adopted the Atlanta Road Corridor Redevelopment Plan as the written plan of redevelopment for the Atlanta Road Corridor Redevelopment Area and the Tax Allocation District, all pursuant to the Redevelopment Powers Law; and

**WHEREAS**, Cobb County, Georgia (the “County”), by a resolution adopted by the Board of Commissioners of Cobb County on December 9, 2003 (the “County Consent Resolution”), a true and correct copy of which is attached hereto as Exhibit B, consented, pursuant to Section 36-44-9(b) of the Georgia Code, to the inclusion of its ad valorem property taxes in the computation of “tax allocation increments” (as defined in the Redevelopment Powers Law) derived from the Tax Allocation District; and

**WHEREAS**, the “tax allocation increment base” (as defined in the Redevelopment Powers Law) for the Tax Allocation District was originally calculated as of December 31, 2003, pursuant to the TAD Resolution; and

**WHEREAS**, Section 36-44-9(f) of the Georgia Code provides that a county may pledge all or part of county general funds derived from a municipal tax allocation district for payment or security of payment of tax allocation bonds issued by the municipality and for payment of other redevelopment costs of the tax allocation district if the local legislative body of the county consents to the use of such general funds by resolution duly adopted by said local legislative body; and

**WHEREAS**, the General Assembly of the State of Georgia enacted a local law (2002 Ga. Laws 5043 to 5045, inclusive) authorizing the County to exercise all redevelopment and other powers under the Redevelopment Powers Law, which local law was approved in a referendum held on November 5, 2002, by a majority of the qualified voters of the County voting thereon; and

**WHEREAS**, the City requested the County, in a letter dated December 10, 2013, to redetermine the tax allocation increment base for the Tax Allocation District as of December 31, 2013 (the “Redetermination Request”), and the County has acquiesced to the Redetermination Request by the conduct of its Tax Commissioner since 2014; and

**WHEREAS**, the County proposes to implement the Redetermination Request by authorizing the pledge of the County’s “ad valorem property taxes” (as defined in the Redevelopment Powers Law) derived from \$5,499,873 of “taxable value” (as defined in the Redevelopment Powers Law) within the Tax Allocation District (the “County’s Additional Tax Allocation Increment”), which taxable value is the difference between the taxable value within the Tax Allocation District calculated as of December 31, 2003 (\$29,478,740) and the taxable value within the Tax Allocation District calculated as of December 31, 2013 (\$23,978,867) and which ad valorem property taxes constitutes part of the County’s general funds derived from the Tax Allocation District, within the meaning of Section 36-44-9(f) of the Georgia Code, for payment or security of payment of “tax allocation bonds” (as defined in the Redevelopment Powers Law) issued by the City and for payment of other “redevelopment costs” (as defined in the Redevelopment Powers Law) of the Tax Allocation District, pursuant to the terms of a resolution to be adopted by the Board of Commissioners of Cobb County (the “Second County Consent Resolution”); and

**WHEREAS**, the City entered into a Development Agreement, dated August 11, 2008, as supplemented and amended by a First Amendment to Development Agreement, dated December 16, 2013 (collectively the “Development Agreement”), with the Smyrna Downtown

Development Authority and Halpern Enterprises, Inc., under the terms of which the City obligated itself to pay “redevelopment costs” (as defined in the Redevelopment Powers Law) for the Tax Allocation District; and

**WHEREAS**, the Redevelopment Powers Law authorizes the City (1) whenever it deems it expedient, to refund any tax allocation bonds by the issuance of new tax allocation bonds, whether or not the bonds to be refunded have matured; (2) to deposit moneys into and disburse moneys from the special fund of any tax allocation district; (3) to enter into and execute any contracts or other agreements, including agreements with bondholders or lenders, determined by the Mayor and Council to be necessary or convenient to implement the provisions and effectuate the purposes of redevelopment plans; (4) in order to increase the security and marketability of tax allocation bonds, to make covenants and do any and all acts not inconsistent with the Constitution of the State of Georgia or the Redevelopment Powers Law as may be necessary or convenient or desirable in order additionally to secure tax allocation bonds or tend to make them more marketable according to the best judgment of the Mayor and Council; and (5) to use, pledge, or otherwise obligate its general funds for payment or security for payment of tax allocation bonds issued or incurred under the Redevelopment Powers Law but only if those general funds are derived from a designated tax allocation district and used for payment or security for payment of tax allocation bonds issued or incurred under the Redevelopment Powers Law for redevelopment of that district and only to the extent that positive tax increments or lease or other contract payments in that district’s special fund are insufficient at any time to pay principal and interest due on such bonds; and

**WHEREAS**, the Redevelopment Powers Law defines “tax allocation bonds” to mean one or more series of bonds, notes, or other obligations issued by the City to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Section 36-44-14 of the Georgia Code, as determined by the City subject to the limitations of Sections 36-44-9 and 36-44-20 of the Georgia Code; and

**WHEREAS**, the City proposes to issue, sell, and deliver its tax allocation bond to be known as “City of Smyrna Refunding Tax Allocation Bond (Atlanta Road Corridor Project), Series 2019,” in the principal amount of \$12,725,000 (the “Bond”), for the purpose of obtaining funds to refund by prepayment all of the City’s unpaid obligations owed under the Development Agreement (the “Prior Obligations”) and to finance related costs; and

**WHEREAS**, the City desires to authorize the pledge of the City’s “ad valorem property taxes” (as defined in the Redevelopment Powers Law) derived from \$5,499,873 of “taxable value” (as defined in the Redevelopment Powers Law) within the Tax Allocation District (the “City’s Additional Tax Allocation Increment”), which taxable value is the difference between the taxable value within the Tax Allocation District calculated as of December 31, 2003 (\$29,478,740) and the taxable value within the Tax Allocation District calculated as of December 31, 2013 (\$23,978,867) and which ad valorem property taxes constitutes part of the City’s general funds derived from the Tax Allocation District, within the meaning of Section 36-44-20(a) of the Georgia Code, for payment or security of payment of the Bond; and

**WHEREAS**, the City proposes to sell the Bond at private sale as permitted by the Redevelopment Powers Law to Vinings Bank (the “Bond Buyer”) pursuant to a Bond Purchase Agreement, to be dated the date of its execution and delivery (the “Bond Purchase Agreement”), between the City and the Bond Buyer, the form of which is attached hereto as Exhibit C; and

**WHEREAS**, the City proposes to retain Raymond James & Associates, Inc. (the “Placement Agent”) to act as its exclusive placement agent to arrange a private placement of the Bond with the Bond Buyer, pursuant to a Bond Placement Agreement, to be dated the date of its execution and delivery (the “Placement Agreement”), between the City and the Placement Agent, the form of which has been submitted to the City and is now on file with the City; and

**WHEREAS**, the City hereby finds and determines that refunding the Prior Obligations will further the purposes and policies of the Redevelopment Powers Law;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SMYRNA AS FOLLOWS:**

1. In order to further the public purposes of the Redevelopment Powers Law, the City is hereby authorized to issue the Bond to refund the Prior Obligations and to finance related costs, and all such assistance previously provided is hereby ratified and approved. It is hereby found, ascertained, determined, and declared that refunding the Prior Obligations is for a public purpose, because it will achieve debt service savings and decrease the final maturity date of tax allocation bonds outstanding for the Tax Allocation District.

2. For the purpose of refunding the Prior Obligations and of financing related costs, the issuance of \$12,725,000 in principal amount of a tax allocation bond of the City to be known as “City of Smyrna Refunding Tax Allocation Bond (Atlanta Road Corridor Project), Series 2019” is hereby approved and authorized pursuant to the provisions of the Redevelopment Powers Law.

3. The Bond shall be dated the date of its issuance and delivery, shall be issued as a single, fully registered bond without coupons in the principal amount of \$12,725,000, and shall be numbered R-1.

The Bond shall bear interest from its dated date on the outstanding principal amount thereof at the rate of 3.65% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months.

Interest on the Bond shall be payable on February 1, 2020 and annually thereafter on February 1 of each year. Principal of the Bond shall be payable on February 1, in the years and in the amounts as follows, unless earlier called for redemption:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2020	\$100,000	2031	\$ 100,000
2021	100,000	2032	100,000
2022	100,000	2033	100,000
2023	100,000	2034	100,000
2024	100,000	2035	100,000
2025	100,000	2036	100,000
2026	100,000	2037	100,000
2027	100,000	2038	100,000
2028	100,000	2039	100,000
2029	100,000	2040	10,725,000
2030	100,000		

The Bond shall bear interest on any overdue installment of principal and, to the extent permitted by applicable law, on any overdue installment of interest, at the aforesaid rate.

The Bond shall be substantially in the form set forth in the Bond Purchase Agreement hereinafter authorized and shall be subject to redemption, shall be payable in such medium of payment at such place or places, shall be of such tenor, and shall have such other terms and provisions as are provided in the Bond Purchase Agreement. The form of the Bond and the provisions for execution, delivery, payment, substitution, transfer, registration, and redemption shall be as set forth in the Bond Purchase Agreement hereinafter authorized.

4. It is found, ascertained, determined, and declared, as permitted by Section 36-44-20(b) of the Georgia Code, that the positive “tax allocation increments” (as defined in the Redevelopment Powers Law) to be received by the City from the Tax Allocation District have been calculated to be insufficient to pay the principal of, premium, if any, and interest on the Bond according to the City’s desired mandatory redemption schedule, and the pledge of the City’s Additional Tax Allocation Increment is hereby authorized pursuant to Section 36-44-20(a) of the Georgia Code.

5. It is found, ascertained, determined, and declared that the “tax allocation increments” (as defined in the Redevelopment Powers Law) to be received by the City from the Tax Allocation District, the City’s Additional Tax Allocation Increment, and the County’s Additional Tax Allocation Increment have been calculated to be sufficient in the aggregate to pay the principal of, premium, if any, and interest on the Bond as the same become due and payable, and all of such tax allocation increments, the City’s Additional Tax Allocation Increment, and the County’s Additional Tax Allocation Increment are hereby pledged for that purpose and in addition for such other purposes as are more fully set forth and provided for in the Bond Purchase Agreement. The Bond shall be secured as provided in the Bond Purchase Agreement.

6. The Bond shall never constitute an indebtedness or general obligation of the State of Georgia, the City, Cobb County, Georgia, or any other political subdivision of the State of Georgia, within the meaning of any constitutional provision or statutory limitation whatsoever,

nor a pledge of the faith and credit or general taxing power of any of the foregoing, nor shall any of the foregoing be subject to any pecuniary liability thereon. The Bond shall not be payable from nor a charge upon any funds other than the revenues pledged to the payment thereof and shall be a limited or special obligation of the City payable solely from the funds provided therefor in the Bond Purchase Agreement. No owner of the Bond shall ever have the right to compel the exercise of the general taxing power of the State of Georgia, the City, Cobb County, Georgia, or any other political subdivision of the State of Georgia to pay the principal of the Bond or the interest or any premium thereon, or to enforce payment thereof against any property of the foregoing, except for the funds pledged to secure the Bond in the Bond Purchase Agreement, nor shall the Bond constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the foregoing, except for the funds pledged to secure the Bond in the Bond Purchase Agreement. None of the Mayor, any councilman, or any person executing the Bond shall be liable personally on the Bond by reason of the issuance thereof.

7. The forms, terms, and conditions and the execution, delivery, and performance of the Bond Purchase Agreement, attached hereto as Exhibit C, and the Placement Agreement, filed with the City, are hereby approved and authorized. The Bond Purchase Agreement and the Placement Agreement (collectively the "City Contracts") shall be in substantially the forms submitted to the Mayor and Council of the City with such changes, corrections, deletions, insertions, variations, additions, or omissions as may be approved by the Mayor or Mayor Pro Tem. of the City, whose approval thereof shall be conclusively evidenced by the execution of each such instrument.

8. The Mayor or Mayor Pro Tem. of the City is hereby authorized and directed to execute on behalf of the City the City Contracts, and the City Clerk or Deputy City Clerk of the City is hereby authorized and directed to affix thereto and attest the seal of the City, upon proper execution and delivery by the other parties thereto, provided, that in no event shall any such attestation or affixation of the seal of the City be required as a prerequisite to the effectiveness thereof, and the Mayor or Mayor Pro Tem. and City Clerk or Deputy City Clerk are authorized and directed to deliver the City Contracts on behalf of the City to the other parties thereto and to execute and deliver all such other contracts, instruments, documents, affidavits, or certificates and to do and perform all such things and acts as each shall deem necessary or appropriate in furtherance of the issuance of the Bond and the carrying out of the transactions authorized by this Bond Resolution or contemplated by the instruments and documents referred to in this Bond Resolution. The Bond shall be executed on behalf of the City by its Mayor or Mayor Pro Tem. by his or her manual signature, and the official seal of the City shall be impressed thereon and attested by the manual signature of the City Clerk or Deputy City Clerk of the City.

9. The attorneys for the City, Cochran & Edwards, are hereby authorized and instructed to commence validation proceedings in accordance with the requirements of Article 3 of Chapter 82 of Title 36 of the Georgia Code and to take all actions necessary to obtain an order of the Superior Court of Cobb County validating and confirming the Bond and the security therefor. The Mayor or Mayor Pro Tem. and City Clerk or Deputy City Clerk are hereby authorized and directed to execute any pleadings in connection therewith.

10. This Bond Resolution and the City Contracts, as approved by this Bond Resolution, all of which are hereby incorporated in this Bond Resolution by this reference thereto, shall be

placed on file at the office of the City and made available for public inspection by any interested party immediately following the passage and approval of this Bond Resolution.

11. No representation, statement, covenant, stipulation, obligation, or agreement herein contained, or contained in the Bond, the City Contracts, or in any certificate or other instrument to be executed in connection with the issuance of the Bond, shall be deemed to be a representation, statement, covenant, stipulation, obligation, or agreement of any councilman, official, officer, employee, or agent of the City in his or her individual capacity, and none of the foregoing persons nor any of the officials of the City executing the Bond, the City Contracts, or any certificate or other instrument to be executed in connection with the issuance of the Bond shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

12. Except as otherwise expressly provided herein or in the Bond or the City Contracts, nothing in this Bond Resolution or in the Bond or the City Contracts, express or implied, is intended or shall be construed to confer upon any person, firm, corporation, or other organization, other than the City, the Bond Buyer, the Placement Agent, and the registered owner from time to time of the Bond, any right, remedy, or claim, legal or equitable, under and by reason of this Bond Resolution or any provision hereof, or of the Bond or the City Contracts, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the City, the Bond Buyer, the Placement Agent, and the registered owner from time to time of the Bond.

13. All acts, conditions, and things relating to the passage of this Bond Resolution; to the issuance, sale, and delivery of the Bond; and to the execution and delivery of the City Contracts, required by the Constitution or other laws of the State of Georgia to happen, exist, and be performed precedent to the passage hereof, have happened, exist, and have been performed as so required, with the exception of the validation proceedings referred to in paragraph 9 above.

14. The councilmen of the City and its officials, officers, attorneys, engineers, or other agents or employees are hereby authorized to do all acts and things required of them by this Bond Resolution, the Bond, and the City Contracts and to do all acts and things that are desirable and consistent with the requirements hereof or of the Bond and the City Contracts for the full, punctual, and complete performance of all the terms, covenants, and agreements contained herein or in the Bond and the City Contracts.

15. All motions, orders, ordinances, resolutions, and parts thereof in conflict herewith are hereby repealed to the extent only of such conflict. This repealer shall not be construed as reviving any motion, order, ordinance, resolution, or part thereof.

16. The Mayor or Mayor Pro Tem. of the City is authorized and directed on behalf of the City (i) to execute and deliver a certificate as to the reasonable expectations of the City regarding the amount and use of the proceeds of the Bond; (ii) to execute and file with the Internal Revenue Service Internal Revenue Service Form 8038-G, as required by Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Tax Code"); and (iii) to execute and make all other certifications and filings required under Section 103 of the Tax Code and the applicable Treasury Regulations promulgated thereunder.



17. The City hereby waives the requirements of Section 36-82-100 of the Georgia Code, requiring a performance audit or performance review to be conducted with respect to the expenditure of the proceeds of the Bond, and hereby directs that the Notice to the Public regarding the validation hearing for the Bond contain language, in bold face type, giving notice that no such performance audit or performance review will be conducted with respect to the Bond.

18. This Bond Resolution shall become effective immediately, and if any section, paragraph, clause, or provision hereof shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining provisions hereof.

**PASSED, ADOPTED, SIGNED, APPROVED, and EFFECTIVE** this 21st day of October 2019.

**CITY OF SMYRNA**

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

(SEAL)

Attest:

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

**CITY CLERK'S CERTIFICATE**

I, **TERRI GRAHAM**, the duly appointed, qualified, and acting City Clerk of the City of Smyrna (the "City"), **DO HEREBY CERTIFY** that the foregoing pages of typewritten matter pertaining to the tax allocation bond designated "City of Smyrna Refunding Tax Allocation Bond (Atlanta Road Corridor Project), Series 2019" constitute a true and correct copy of the Bond Resolution adopted on October 21, 2019 by the Mayor and Council of the City in a meeting duly called and assembled, after due and reasonable notice was given in accordance with the procedures of the City and with applicable provisions of law, which was open to the public and at which a quorum was present and acting throughout, and that the original of such Bond Resolution appears of public record in the Minute Book of the City, which is in my custody and control.

I further certify that such Bond Resolution has not been rescinded, repealed, or modified.

**GIVEN** under my hand and the seal of the City, this 21st day of October 2019.

(SEAL)

\_\_\_\_\_  
City Clerk, City of Smyrna