

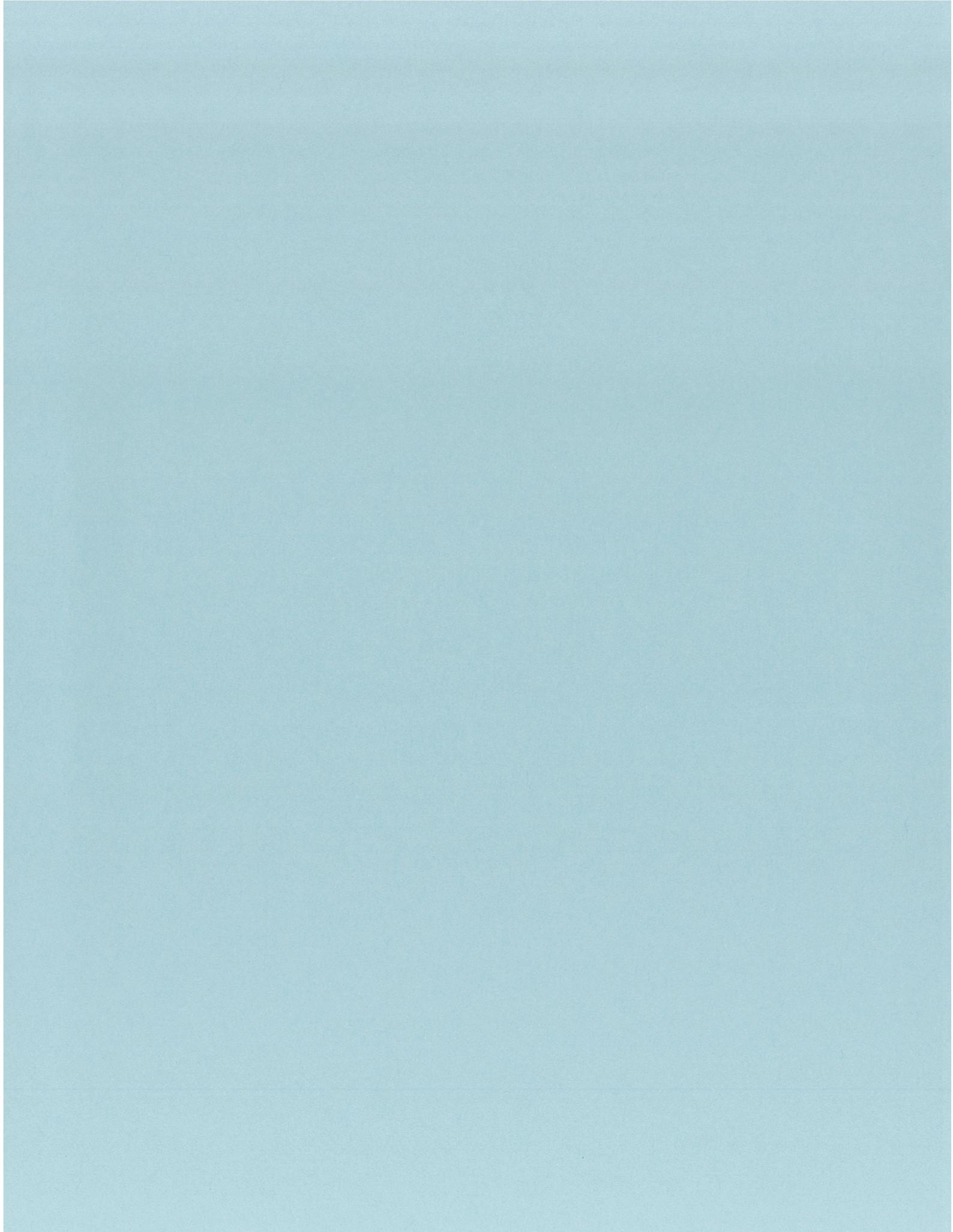
# **ATLANTA GULCH PROJECT**

## **Atlanta City Council Supplemental Legislative Package**

October 2018

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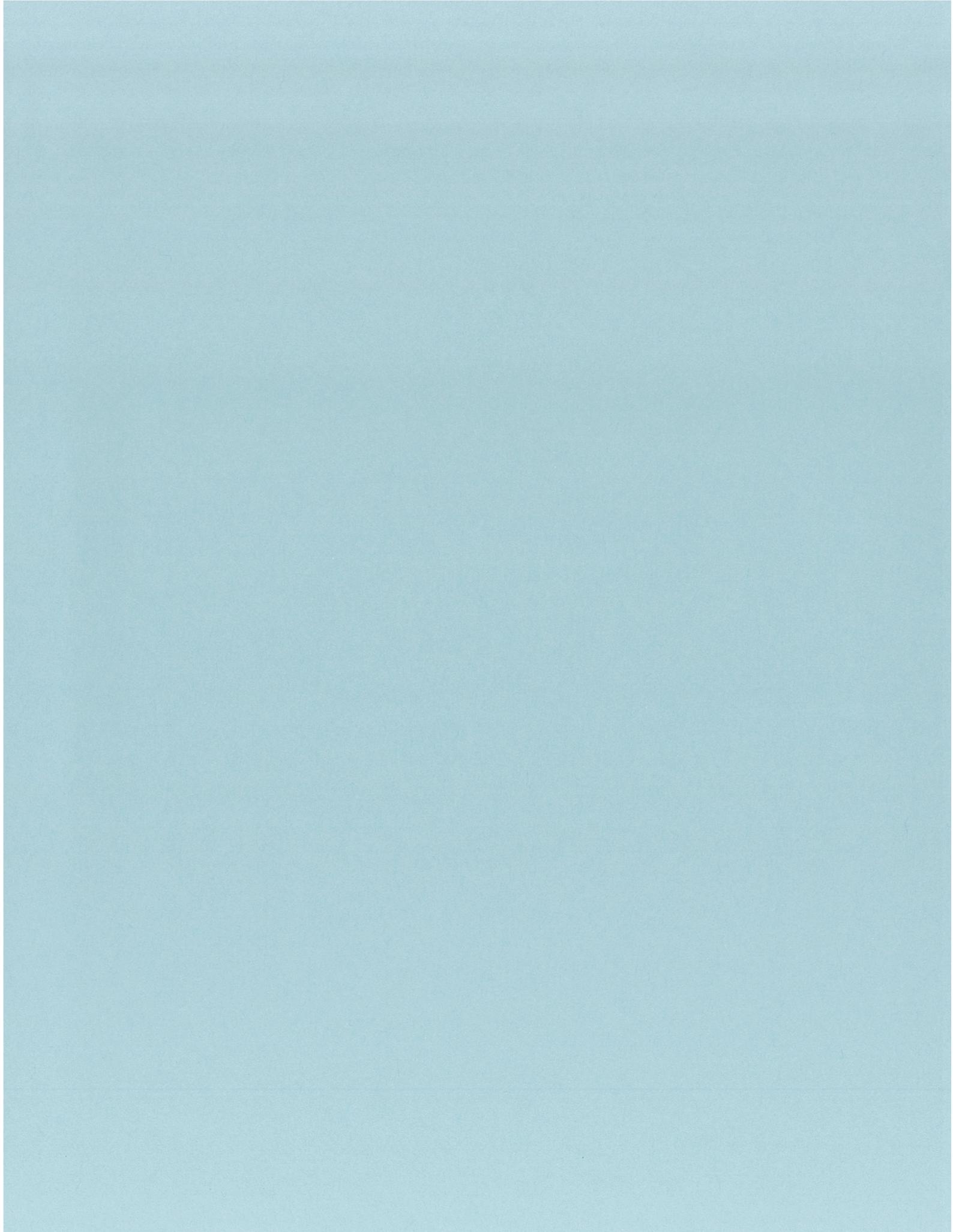
1. Evaluation Report of Springsted Incorporated, Independent Consultant identified by Georgia Municipal Association (GMA)
2. Gulch Area TAD Bond Ordinance (Full Redline Set)
3. Gulch Enterprise Zone Ordinance (Full Redline Set)
4. Existing Westside TAD Amendment (Full Redline Set)



## Summary of Changed Pages

### Amendments to Existing Westside TAD Bond Document Amendments

Document	Business Term Changes	Technical Changes
<b>Ordinance 18-O-1485</b> <b>Amending Existing Westside TAD Bond Documents</b>		- Requires document approval as to form by City Attorney.



**AN ORDINANCE  
BY COUNCILMEMBERS CLETA WINSLOW, IVORY LEE YOUNG, JR. AND  
MICHAEL JULIAN BOND**

**AS SUBSTITUTED BY COMMUNITY DEVELOPMENT/HUMAN SERVICES  
COMMITTEE**

**AN ORDINANCE OF THE CITY OF ATLANTA TO PROVIDE FOR THE RESTATEMENT AND EXCHANGE OF ITS TAX ALLOCATION VARIABLE RATE BONDS (WESTSIDE PROJECT), SERIES 2001-R, IN THE CURRENT OUTSTANDING PRINCIPAL AMOUNT OF \$3,535,000, ITS TAX ALLOCATION VARIABLE RATE BONDS (WESTSIDE PROJECT), SERIES 2005A-R, IN THE CURRENT OUTSTANDING PRINCIPAL AMOUNT OF \$32,680,000, ITS TAX ALLOCATION VARIABLE RATE BONDS (WESTSIDE PROJECT), SERIES 2005B-R, IN THE CURRENT OUTSTANDING PRINCIPAL AMOUNT OF \$4,905,000, AND ITS TAX ALLOCATION VARIABLE RATE BONDS (WESTSIDE PROJECT), SERIES 2008-R, IN THE CURRENT OUTSTANDING PRINCIPAL AMOUNT OF \$48,290,000, IN ORDER TO RESTRUCTURE THE SECURITY THEREFOR; THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INDENTURE OF TRUST AND AN AMENDED AND RESTATED CONTINUING COVENANTS AGREEMENT; AND FOR CERTAIN OTHER PURPOSES, ALL IN CONNECTION WITH THE RESTATEMENT AND EXCHANGE OF THE FOREGOING DESCRIBED BONDS.**

**WHEREAS**, the City of Atlanta (the “**City**”) is a municipal corporation of the State of Georgia and a “political subdivision” as defined in Chapter 44 of Title 36 of the Official Code of Georgia Annotated, known as the “Redevelopment Powers Law,” as amended (the “**Act**”); and

**WHEREAS**, in order to encourage the development of an economically and socially depressed area in the City, the City Council pursuant to Resolution No. 92-R-1575 adopted on December 7, 1992, and approved by the Mayor of the City (the “**Mayor**”) on December 15, 1992, (i) created the Techwood Park Urban Redevelopment Area and Tax Allocation District Number One - Atlanta/Techwood Park (the “**Techwood Redevelopment Area**”), (ii) adopted the Techwood Park Urban Redevelopment Plan (the “**Techwood Redevelopment Plan**”), and (iii) created Tax Allocation District Number One - Atlanta/Techwood Park (the “**Techwood TAD**”); and

**WHEREAS**, pursuant to Resolution No. 98-R-0777, adopted by the City Council on July 6, 1998, and approved by the Mayor on July 13, 1998, as amended (the “**Westside Resolution**”), the City, among other matters, (i) renamed the Techwood Redevelopment Area as The Westside Redevelopment Area and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the “**Westside Redevelopment Area**”), (ii) renamed

the Techwood Redevelopment Plan as The Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the “**Westside Redevelopment Plan**”), (iii) amended the Techwood TAD and established The Westside Tax Allocation Bond District Number 1, As Amended - Atlanta/Westside (the “**Westside TAD**”), and (iv) expanded the boundaries of the Westside TAD so as to include certain distressed and vacant properties; and

**WHEREAS**, the Westside Redevelopment Plan was amended by Resolution No. 98-R-1911, adopted by the Council on October 19, 1998, and approved by the Mayor on October 27, 1998; Resolution No. 08-R-1549, adopted by the Council on August 18, 2008, and approved by the Mayor on August 21, 2008; and Resolution No. 18-R-3381, considered for adoption by the Council and approved by the Mayor contemporaneously with the approval of this Ordinance, pursuant to which, among other matters, the City has provided for the inclusion of City ad valorem property taxes in the computation of the tax allocation increment for the Westside TAD through and including December 31, 2048 (collectively, the “**Amendments**” and, together with the Westside Resolution, the “**City Resolution**”); and

**WHEREAS**, the Redevelopment Powers Law authorizes municipalities, counties and independent school districts to consent to the allocation of positive tax increment derived from ad valorem property taxes generated on specified property within a tax allocation district to be used for Redevelopment Costs; and

**WHEREAS**, the Board of Commissioners of Fulton County, Georgia (“**Fulton County**”), pursuant to Resolution No. 98-1452 adopted on November 18, 1998, as amended by Resolution No. 05-0851 adopted on July 20, 2005 and Resolution No. 08-1010 adopted on December 17, 2008, previously consented to the inclusion of its ad valorem property tax revenues in the computation of the tax allocation increment for the Westside TAD; and

~~**WHEREAS, the City has proposed that Fulton County adopt legislation authorizing the extension of its consent to the inclusion of its ad valorem property tax revenues in the computation of the Westside TAD for an additional term of years to be determined by Fulton County; and**~~

**WHEREAS**, the Atlanta Public Schools, by and through the Atlanta Board of Education (the “**School Board**”), by resolution adopted on November 8, 1998 (as amended on September 12, 2005), previously consented to the inclusion of its share of ad valorem property tax revenues in the computation of the tax allocation increment for the Westside TAD; and

~~**WHEREAS, the City has proposed that School Board adopt legislation authorizing the extension of its consent to the inclusion of its ad valorem property tax revenues in the computation of the Westside TAD for an additional term of years to be determined by School Board; and**~~

**WHEREAS**, the Westside Redevelopment Plan contemplates the redevelopment and revitalization of portions of urban, residential and commercial property located within the Westside TAD, including the Gulch Area (as defined in the hereinafter referred to Indenture), through redevelopment or construction of new retail, office and residential properties, cultural and

entertainment facilities, hotels, schools, community services, parks, open spaces, parking, transportation linkages and other land uses to be constructed on a project by project basis by independent developers; and

**WHEREAS**, the City has appointed the Atlanta Development Authority as the City's Redevelopment Agent for the Westside TAD to implement the Westside Redevelopment Plan, and, acting as such, the Redevelopment Agent has approved certain projects and phases of projects (collectively, the "**Westside TAD Projects**") as part of the redevelopment of the Westside TAD; and

**WHEREAS**, at the request of the Redevelopment Agent, the City has previously issued its tax allocation bonds pursuant to an Indenture of Trust dated as of December 1, 2001, a First Supplemental Indenture of Trust dated as of December 1, 2005, a Second Supplemental Indenture of Trust dated as of December 1, 2008, a Third Supplemental Indenture of Trust dated as of September 1, 2011 and a Fourth Supplemental Indenture of Trust dated as of September 1, 2014 (as previously supplemented and amended, the "**Original Indenture**"), between the City and The Bank of New York Mellon, as trustee (the "**Trustee**"), in order to finance certain redevelopment costs as part of the Westside TAD Projects; and

**WHEREAS**, the City has previously issued its (1) Tax Allocation Variable Rate Bonds (Westside Project), Series 2001, in the original aggregate principal amount of \$14,995,000 (the "**Original 2001 Bonds**"), to finance a portion of the costs of the Westside TAD Projects; (2) Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A in the original aggregate principal amount of \$72,350,000 (the "**Original 2005A Bonds**"), and Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B in the original aggregate principal amount of \$10,215,000 (the "**Original 2005B Bonds**" and, together with the Original 2005A Bonds, the "**Original 2005 Bonds**"), to finance a portion of the costs of the Westside TAD Projects; and (3) Tax Allocation Variable Rate Bonds (Westside Project), Series 2008 in the original aggregate principal amount of \$63,760,000 (the "**Original 2008 Bonds**"), to finance a portion of the costs of the Westside TAD Projects; and

**WHEREAS**, the Original 2001 Bonds, the Original 2005 Bonds and the Original 2008 Bonds (collectively, the "**Original Bank Bonds**") have previously been converted to the Long Term Period (as defined in the Original Indenture) and purchased by Wells Fargo Bank, National Association (the "**Bank**"), pursuant to a Continuing Covenants Agreement dated as of September 1, 2011 (as previously supplemented and amended, the "**Original Covenants Agreement**"); and

**WHEREAS**, pursuant to the Original Indenture, as a portion of the security for payment of the principal of and premium, if any, and interest on the Original Bank Bonds, the City pledged and assigned and granted a lien on and security interest in the positive ad valorem tax increments, as calculated pursuant to O.C.G.A. § 36-44-3(14), generated within the Westside TAD from ad valorem property taxes levied by the City, Fulton County and the School Board; and

**WHEREAS**, the City desires to amend the Original Indenture and release from the lien of the Trust Estate established thereunder the positive ad valorem tax increments generated within the Gulch Area of the Westside TAD from the security pledged to the payment of the Original

Bank Bonds pursuant to that certain Amended and Restated Indenture of Trust ( as so amended, the “**Indenture**”); to amend the Original Covenants Agreement to establish an additional debt service reserve of \$5,000,000 to further secure payment of the Original Bank Bonds pursuant to that certain Amended and Restated Covenants Agreement (as so amended, the “**Covenants Agreement**”); and to exchange the Original Bank Bonds for Restated Bonds (as defined in Section 3 hereof), as required by the Original Indenture;

**NOW, THEREFORE**, be it ordained by the City Council, and it is hereby ordained by the authority of the same, as follows:

**Section 1. Authority for Ordinance.** This Ordinance is adopted pursuant to the provisions of the Constitution and the laws of the State of Georgia.

**Section 2. Findings.** It is hereby ascertained, determined and declared that:

(a) providing for the restatement and exchange of bonds for the purpose of restructuring the security therefor is a lawful and valid undertaking in that it will further the public purpose intended to be serviced by the Act;

(b) the Restated Bonds (as hereinafter defined) constitute only limited obligations of the City and are payable solely from the revenues assigned and pledged to the payment thereof and do not constitute a debt or a general obligation or a pledge of the faith and credit of the State of Georgia or any political subdivision, county or independent board of education thereof, including the City, Fulton County and the School Board, and will not directly or indirectly obligate such State or political subdivision, county or independent board of education thereof, including the City, Fulton County and the School Board, to levy or to pledge any form of taxation whatever for the payment thereof.

**Section 3. Authorization of Restated Bonds.** For the purpose of restructuring the security for the Original Bank Bonds, the restatement and exchange of the Original Bank Bonds for the Restated Bonds authorized by the Indenture in the following designations and amounts is hereby authorized: (1) Tax Allocation Variable Rate Bonds (Westside Project), Series 2001-R, in the aggregate principal amount of \$3,535,000 (the “**Restated 2001 Bonds**”); (2) Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A-R in the aggregate principal amount of \$32,680,000 (the “**Restated 2005A Bonds**”), and its Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B-R in the aggregate principal amount of \$4,905,000 (the “**Restated 2005B Bonds**” and, together with the Series 2005A Bonds, the “**Restated 2005 Bonds**”); and (3) Tax Allocation Variable Rate Bonds (Westside Project), Series 2008-R in the aggregate principal amount of \$48,290,000 (the “**Restated 2008 Bonds**”), all pursuant to the Indenture. The Restated 2001 Bonds, the Restated 2005 Bonds and the Restated 2008 Bonds are referred to collectively as the “**Restated Bonds.**” The interest rates, redemption provisions and dates of maturity of the Restated Bonds shall not change from those of the corresponding Original Bank Bonds.

**Section 4. Authorization of Indenture.** The execution, delivery and performance of the Indenture between the City and the Trustee are hereby authorized. The Indenture shall be in substantially the form attached hereto as Exhibit “1”, ~~subject to such changes, insertions or~~

~~omissions as may be as~~ approved by the ~~Mayor~~City Attorney as to such form, and the execution of the Indenture by the Mayor as hereby authorized shall be conclusive evidence of any such approval.

**Section 5. Authorization of Covenants Agreement.** The execution, delivery and performance of the Covenants Agreement by and between the City and the Bank, are hereby authorized. The Covenants Agreement shall be in substantially the form attached hereto as Exhibit "2," ~~subject to changes, insertions or omissions as may be as~~ approved by the ~~Mayor~~City Attorney as to such form, and the execution of the Covenants Agreement by the Mayor as hereby authorized shall be conclusive evidence of any such approval.

**Section 6. Execution of Restated Bonds.** The Restated Bonds shall be executed in the manner provided in the Indenture, and the same shall be delivered to the Trustee for proper authentication and delivery to the Bank with instructions to that effect as provided in the Indenture.

**Section 7. Validation of Restated Bonds.** The Mayor is hereby authorized and directed to immediately notify the District Attorney of the Atlanta Judicial Circuit of the action taken by the City, to request the District Attorney to institute a proceeding to confirm and validate the Restated Bonds and to pass upon the security therefor, and the Mayor, Chief Financial Officer of the City and the Municipal Clerk are further authorized to acknowledge service and make answer in such proceeding.

**Section 8. No Personal Liability.** No stipulation, obligation or agreement herein contained or contained in the Indenture or the Covenants Agreement shall be deemed to be a stipulation, obligation or agreement of any officer, director, agent or employee of the City in his individual capacity, and no such officer, director, agent or employee shall be personally liable on the Restated Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

**Section 9. General Authority.** From and after the execution and delivery of the documents hereinabove authorized, the proper officers, directors, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things to execute all such documents as may be necessary to carry out and comply with the provisions of the documents as authorized herein, and are further authorized to take any and all further actions and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the restatement and exchange of the Restated Bonds and in conformity with the purposes and intents of this Ordinance.

**Section 10. Actions Approved and Confirmed.** All acts and doings of the officers of the City that are in conformity with the purposes and intents of this Ordinance and in furtherance of the restatement and exchange of the Restated Bonds, and the execution, delivery and performance of the Indenture and the Covenants Agreement shall be, and the same hereby are, in all respects approved and confirmed.

**Section 11. Severability of Invalid Provision.** If any one or more of the agreements or provisions herein contained shall for any reason whatsoever be held invalid, then such covenants,

agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof or of the Restated Bonds authorized hereunder.

**Section 12. Repealing Clause.** All resolutions or parts thereof of the City in conflict with provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

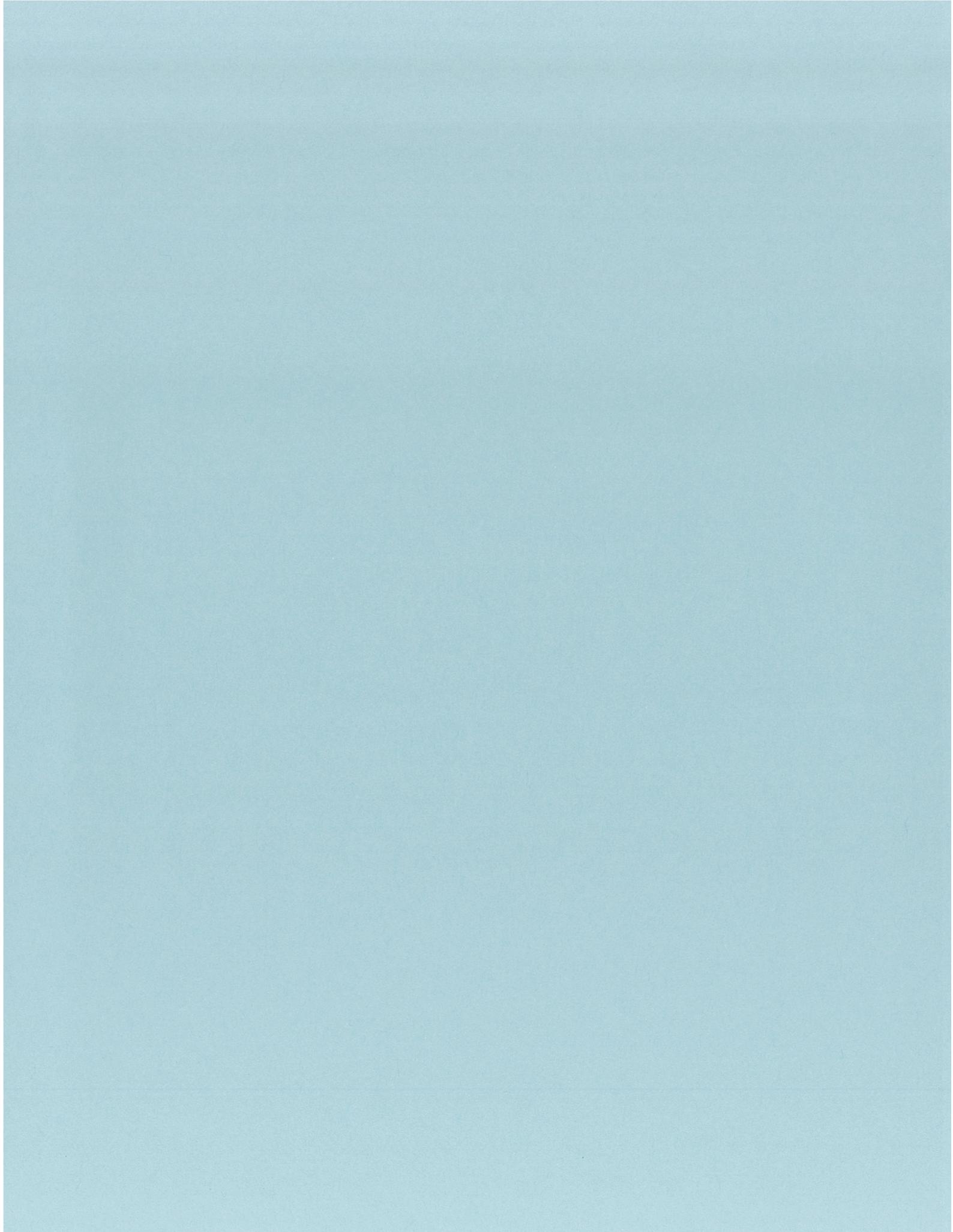
**Section 13. Effective Date.** This Ordinance shall take effect immediately upon its adoption.

**FORM OF AMENDED AND RESTATED INDENTURE OF TRUST**

**FORM OF AMENDED AND RESTATED CONTINUING COVENANTS AGREEMENT**

**Summary report:**  
**Litéra® Change-Pro TDC 7.5.0.235 Document comparison done on**  
**10/21/2018 9:11:43 PM**

<b>Style name:</b> Firm Standard	
<b>Intelligent Table Comparison:</b> Active	
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>12</b>



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**AMENDED AND RESTATED INDENTURE OF TRUST**

**between**

**CITY OF ATLANTA**

**and**

**THE BANK OF NEW YORK MELLON, as Trustee**

**Amended and Restated as of \_\_\_\_\_, 2018**

**securing**

**\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2001-R**

**\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2005A-R**

**\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2005B-R**

**\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2008-R**

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**THIS AMENDED AND RESTATED INDENTURE OF TRUST**, amended and restated as of \_\_\_\_\_, 2018 (this “Indenture”), by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (the “City”), and **THE BANK OF NEW YORK MELLON**, a banking corporation organized under the laws of the State of New York and having a principal corporate trust office in New York, New York, together with any successor as trustee (the “Trustee”), amends and restates that certain Indenture of Trust dated as of December 1, 2001, between the City and the Trustee (as previously supplemented and amended, the “Original Indenture”);

**W I T N E S S E T H :**

**WHEREAS**, pursuant to the Redevelopment Powers Law (O.C.G.A. § 36-44-1, *et seq.*, as amended), the City of Atlanta (the “City”), pursuant to Resolution No. 92-R-1575 adopted by the Atlanta City Council (the “City Council”) on December 7, 1992 and approved by the Mayor of the City (the “Mayor”) on December 15, 1992, (i) created the Techwood Park Urban Redevelopment Area and Tax Allocation District Number One - Atlanta/Techwood Park (the “Techwood Redevelopment Area”), (ii) adopted the Techwood Park Urban Redevelopment Plan (the “Techwood Redevelopment Plan”), and (iii) created Tax Allocation District Number One - Atlanta/Techwood Park (the “Techwood TAD”); and

**WHEREAS**, pursuant to Resolution No. 98-R-0777, adopted by the City Council on July 6, 1998 and approved by the Mayor on July 13, 1998, as amended (the “Westside Resolution”), the City, among other matters, (i) renamed the Techwood Redevelopment Area as The Westside Redevelopment Area and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the “Westside Redevelopment Area”), (ii) renamed the Techwood Redevelopment Plan as The Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number 1, as Amended - Atlanta/Westside) (the “Westside Redevelopment Plan”), (iii) amended the Techwood TAD and established The Westside Tax Allocation Bond District Number 1, As Amended - Atlanta/Westside (the “Westside TAD”), and (iv) expanded the boundaries of the Westside TAD so as to include certain distressed and vacant properties; and

**WHEREAS**, the Board of Commissioners of Fulton County, Georgia (“Fulton County”), pursuant to Resolution No. 98-1452, adopted on November 18, 1998, as amended by Resolution No. 05-0851 adopted on July 20, 2005 Resolution No. 08-1010 adopted on December 17, 2008, ~~and Resolution No. 18-\_\_\_\_\_, adopted \_\_\_\_\_, 2018~~ consented to the inclusion of its ad valorem property tax revenues in the computation of the tax allocation increment for the Westside TAD through December 31, ~~[2048]~~2038; and

**WHEREAS**, the Atlanta Board of Education (the “School Board”), by resolution adopted on November 8, 1998 (as amended on September 12, 2005 ~~and on \_\_\_\_\_, 2018~~), consented to the inclusion of its share of ad valorem property tax revenues in the computation of the tax allocation increment for the Westside TAD ~~through December 31, [2048]~~; and

**WHEREAS**, the Westside Redevelopment Plan contemplates the redevelopment and revitalization of portions of urban, residential and commercial property located within the Westside TAD through redevelopment or construction of new retail, office and residential

properties, cultural and entertainment facilities, hotels, schools, community services, parks, open spaces, parking, transportation linkages and other land uses to be constructed on a project by project basis by independent developers; and

**WHEREAS**, the City has appointed the Atlanta Development Authority as the City's Redevelopment Agent for the Westside TAD to implement the Westside Redevelopment Plan, and, acting as such, the Redevelopment Agent has approved certain projects and phases of projects (collectively, the "Westside TAD Projects") as part of the redevelopment of the Westside TAD; and

**WHEREAS**, at the request of the Redevelopment Agent, the City has previously issued its tax allocation bonds in order to finance qualified Redevelopment Costs (as hereinafter defined) as part of the Westside TAD Projects; and

**WHEREAS**, the City has previously issued its (1) Tax Allocation Variable Rate Bonds (Westside Project), Series 2001 in the original aggregate principal amount of \$14,995,000 (the "Original 2001 Bonds"), to finance a portion of the costs of the Series 2001 Projects (as defined herein); (2) Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A in the original aggregate principal amount of \$72,350,000 (the "Original 2005A Bonds"), and its Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B in the original aggregate principal amount of \$10,215,000 (the "Original 2005B Bonds" and, together with the Original 2005A Bonds, the "Original 2005 Bonds"), to finance a portion of the costs of the Series 2005 Projects (as defined herein); and (3) Tax Allocation Variable Rate Bonds (Westside Project), Series 2008 in the original aggregate principal amount of \$63,760,000 (the "Original 2008 Bonds"), to finance a portion of the costs of the Series 2008 Projects (as defined herein); and

**WHEREAS**, the Original 2001 Bonds, the Original 2005 Bonds and the Original 2008 Bonds (collectively, the "Original Bank Bonds") have previously been converted to the Long Term Period and purchased by Wells Fargo Bank, National Association (the "Bank"), pursuant to a Continuing Covenants Agreement dated as of September 1, 2011 (as previously supplemented and amended, the "Original Covenants Agreement"); and

**WHEREAS**, pursuant to the Original Indenture, as a portion of the security for payment of the principal of and premium, if any, and interest on the Original Bank Bonds, the City pledged and assigned and granted a lien on and security interest in the positive ad valorem tax increments, as calculated pursuant to O.C.G.A. § 36-44-3(14), generated within the Westside TAD from ad valorem property taxes levied by the City, Fulton County and the School Board; and

**WHEREAS**, the City desires to amend this Indenture and release from the lien of the Trust Estate established hereunder the positive ad valorem tax increments generated within the Gulch Area of the Westside TAD from the security pledged to the payment of the Bonds, and to establish an additional debt service reserve of \$5,000,000 to be held under the Continuing Covenants Agreement to further secure payment of the Original Bank Bonds; and

**WHEREAS**, the City and Wells Fargo Bank, National Association, as tax custodian (the "Tax Custodian") have entered into a Tax Custody and Depository Agreement dated as of \_\_\_\_\_ 1, 2018 (the "Tax Custody Agreement"), pursuant to which the Tax Custodian has

agreed to (i) receive all tax allocation increments generated in the Westside TAD and deposit such increments in the City of Atlanta Special Fund (Westside TAD) (the “Special Fund”) established under the Tax Custody Agreement, and (ii) allocate and deposit all tax allocation increments generated in the Westside TAD outside the Gulch Area to the Tax Increment Fund created by the Continuing Covenants Agreement; and

**WHEREAS**, the Original Indenture permits the City, with the consent of a majority of the owners of the Bonds Outstanding, to amend the Original Indenture and, the Bank, as the sole holder of the Outstanding Bonds, has consented to this Amended and Restated Indenture of Trust and the authentication of replacement Bank Bonds, as required by the Original Indenture; and

**WHEREAS**, the Series 2005 Bonds are equally and ratably secured hereunder with the Series 2001 Bonds, the Series 2008 Bonds and any Additional Bonds issued hereunder, without preference, priority or distinction of any Bonds over any other Bonds, except that as additional security for the Series 2005B Bonds, the City pledged the Series 2005B Bond Additional Security as provided herein; and

**WHEREAS**, all things necessary to make the replacement Bank Bonds, when authenticated by the Trustee and issued as provided in this Indenture, valid, binding and legal limited obligations of the City and to constitute this Indenture a valid and legally binding agreement securing the payment of the principal of and premium, if any, and interest on all Bonds issued and to be issued hereunder, and all other amounts due hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH:**

### **GRANTING CLAUSES**

That the City, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Owners thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, and premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the City of all the covenants expressed herein and in the Bonds, does hereby assign and grant a security interest in the following to the Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the City hereinafter set forth:

### **GRANTING CLAUSE FIRST**

The Revenues (as hereinafter defined).

## **GRANTING CLAUSE SECOND**

All right, title and interest of the City in and to all moneys and securities from time to time held by the Trustee under the terms of this Indenture, other than moneys for the payment of the Purchase Price.

## **GRANTING CLAUSE THIRD**

Any and all other property rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, mortgaged, pledged, hypothecated or otherwise subjected hereto, as and for additional security herewith, by the City or any other person on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trust and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth (a) first, for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds, from time to time, issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds except in the case of funds held hereunder for the benefit of particular Owners of Bonds, and (b) second, for the benefit of the Credit Provider to the extent provided herein;

**PROVIDED, HOWEVER**, that if the City, its successors or assigns shall well and truly pay, or cause to be paid, the principal of, and premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required hereunder, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly cause to be kept, performed and observed all of its covenants and conditions pursuant to the terms of this Indenture, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon the final payment thereof this Indenture and the rights hereby granted shall cease, determine and be void, except to the extent specifically provided in Article VIII hereof; otherwise this Indenture shall remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH**, and it is declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property, rights and interests, any amounts hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as herein expressed, and the City has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Owners of the Bonds as follows:

## ARTICLE I

### DEFINITIONS

#### Section 101. Definitions.

The following words and terms as used in this Indenture shall have the following meanings unless a different meaning clearly appears from the context:

“Act” means Chapter 44 of Title 36 of the Official Code of Georgia Annotated, known as the “Redevelopment Powers Law,” as amended. Reference herein to any specific provision of the Act shall be deemed to include any successor provision of such provision of the Act.

“Act of Bankruptcy” means the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) by or against the City under any applicable bankruptcy, insolvency, reorganization or similar law, now or hereafter in effect.

“Additional Bonds” means, other than the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds, any bonds, notes or other obligations, including any notes or other obligations issued in anticipation of bonds, notes, or other obligations, as the same shall be issued from time to time pursuant to Section 211.

“Additional Security” shall mean, with respect to any Series of Bonds, any revenues, property or collateral pledged by the City to provide additional security for such Series of Bonds.

“Applicable Factor” means, during any Index Rate Period when the Applicable Index is the LIBOR Index, 70%, or, with a Favorable Opinion of Bond Counsel, such other percentage as may be designated in writing by the City as the Applicable Factor for such Index Rate Period pursuant to Section 206(a) hereof. The Applicable Factor does not apply to the determination of the SIFMA Index Rate.

“Applicable Index” means either the SIFMA Index or the LIBOR Index, as designated by the Chief Financial Officer prior to the commencement of any Index Rate Period.

“Applicable Spread” means, with respect to each Index Rate Period, the number of basis points determined by the Remarketing Agent on or before the second Business Day immediately preceding the first day of such Index Rate Period (which may include a schedule for the Applicable Spread based upon the Debt Service Coverage Ratio) that, when added to the product of the Applicable Index and the Applicable Factor, if applicable, would equal the minimum interest rate per annum that would enable the Remarketing Agent to sell the Index Rate Bonds on such date at a price equal to the principal amount thereof, plus accrued interest thereon, if any.

“Attesting Officer” means the individual presently holding the office of Municipal Clerk of the City (or any individual presently holding the office of Deputy Municipal Clerk of the City) and any successor who might hereafter hold such office, and any individual, body, or authority to whom or which may hereafter be delegated by law the duties, powers, authority, obligations, or liabilities of such office.

“Bank Purchase Date” means, (1) during the Index Rate Period immediately following the Reissuance Closing Date (a) December 1, 2022, with respect to the Series 2001 Bonds, and (b) September 1, 2020, with respect to the Series 2005 Bonds and the Series 2008 Bonds and (2) during any other Index Rate Period, the date designated by the City pursuant to Section 206(a) hereof.

“Base Rate” means the highest of (a) the Federal Funds Rate plus 200 basis points, (b) the Prime Rate plus 100 basis points or (c) 7.00%.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise with respect to municipal bonds, selected by the City.

“Bond Fund” means the fund created in Section 601, in which there is established a General Account, a Credit Facility Account and a Remarketing Account.

“Bondholder,” “bondholder,” “Holder” or “Owner” shall mean the registered owner of any Bond.

“Bond Register” means the books of the City kept by the Trustee to evidence the registration and transfer of the Bonds.

“Bonds” means the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds and any Additional Bonds.

“Book-Entry System” shall mean a form or system, as applicable, under which physical Bonds in fully registered form are registered only in the name of the Securities Depository or its nominee, with the physical Bonds “immobilized” in the custody of the Securities Depository.

“Business Day” means a day on which the Trustee, any Credit Provider and banks located in the city in which the principal office of the Trustee is located are required or permitted by law to be open for the purpose of conducting a banking business.

“Calculation Agent” means Wells Fargo Bank, National Association or any other person appointed by the City, with the consent of the Majority Holder, to serve as calculation agent for Bonds of a Series during an Index Rate Period.

“Calculation Period” means any period or periods comprised of up to 270 days, as established by any Remarketing Agent pursuant to Section 204.

“Chief Financial Officer” means the chief financial officer of the City and the head of the City’s Department of Finance.

“Chief Operating Officer” means the individual presently holding the office of Mayor of the City and any successor who might hereafter hold such office, and any individual, body, or authority to whom or which may hereafter be delegated by law the duties, powers, authority, obligations, or liabilities of such office.

“City” means the City of Atlanta, Georgia, a municipal corporation of the State of Georgia.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, including, when appropriate, the statutory predecessor thereof, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final or temporary regulations and also including regulations issued pursuant to the statutory predecessor of the Code, the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions).

“Commercial Paper Interest Payment Date” means, with respect to any Bonds of a Series, the first day after the end of any Calculation Period.

“Commercial Paper Period” means, with respect to any Bond of a Series, any period where one or more Calculation Periods have been established pursuant to Section 204.

“Commercial Paper Rate” means with respect to any Bond of a Series, the interest rate or rates borne by such Bonds during the Commercial Paper Period established pursuant to Section 204.

“Computation Date” means during each Index Rate Period, (a) when the Applicable Index is the LIBOR Index, the second London Business Day preceding each LIBOR Index Reset Date and (b) when the Applicable Index is the SIFMA Index, each Wednesday.

“Continuing Covenants Agreement” means any agreement between the City and a Majority Holder that may be designated as a Continuing Covenants Agreement, as the same may be amended from time to time.

“Conversion Date” means (i) a date on which the interest rate on a Series of Bonds is converted from one type of Interest Period to another type of Interest Period, which date shall be an Interest Payment date for the Interest Period currently in effect, that is at least six months after the date of issuance of the respective Series of Bonds or the last preceding Conversion Date and (ii) a date on which the then-current Index Rate Period is changed to a new Index Rate Period.

“Conversion Notice” means notice by the City to be given in accordance with Section 206 hereof, in connection with a proposed Conversion Date.

“Conversion Option” means the option granted to the City in Section 206 hereof to direct a change from one type of Interest Period to another type of Interest Period or a change from the then-current Index Rate Period to a new Index Rate Period.

“Corporate Trust Office” means the corporate trust office of the Trustee which as of the date hereof is located at 101 Barclay Street, New York, New York 10286; Attn: Corporate Trust Administration.

“Cost of the Project” means Redevelopment Costs applicable to a Project, as approved by the Redevelopment Agent.

“Cost of Series 2001 Project” means the same as Cost of the Project as applied to each of the Series 2001 Projects.

“Credit Agreement” means any letter of credit, reimbursement or similar agreement between the City and any Credit Provider, and any amendments and supplements thereto.

“Credit Facility” means a letter of credit, line of credit, insurance policy or other credit facility securing the payment of the principal and Purchase Price of, redemption premium (if any) and interest on a Series of Bonds, meeting the requirements of, and delivered to the Trustee in accordance with Section 613, together with any and all supplements thereto, the administrative provisions of which are reasonably satisfactory to the Trustee, and, upon acceptance by the Trustee of any Substitute Credit Facility with respect to a Series of Bonds, such Substitute Credit Facility.

“Credit Facility Period” shall mean any Interest Period during which payment of the principal and Purchase Price of, and the interest and redemption premium (if any) on, the Bonds are secured by a Credit Facility.

“Credit Facility Termination Date” means the later of (a) that date upon which the Credit Facility shall expire or terminate pursuant to its terms, and (b) that date to which the expiration or termination of the Credit Facility may be extended, from time to time, either by extension or renewal of the existing Credit Facility.

“Credit Provider” means the provider of any Credit Facility.

“Debt Service Coverage Ratio” shall have the meaning set forth in the Continuing Covenants Agreement.

“Default” means any Default under this Indenture as specified in and defined by Section 901.

“Default Rate” means the fluctuating rate which is at all times equal to the Base Rate plus 300 basis points.

“Demand Purchase Option” means the option granted to Owners of a particular Series of Bonds, while such Bonds bear interest at the Short Term Rate, to require such Bonds be purchased pursuant to Section 402.

“Determination of Taxability” means with respect to any Bond of a Series the interest on which when issued was excludable from gross income for federal income tax purposes, a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on such Bond is or was includable in the gross income of an Owner of such Bonds for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the City has been given written notice and, if it is so desired and is legally allowed, has been afforded the

opportunity to contest the same, either directly or in the name of any Owner of a Bond, and until the conclusion of any appellate review, if sought.

“Eligible Account” means (a) an account maintained with a federal or state-chartered depository institution or trust company that has a short-term debt rating of at least “A-2” (or if no short-term rating, a long-term rating of “BBB+”; or (b) an account maintained with the corporate trust department of a federal depository institution or state-chartered depository institution (subject to the regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations Section 9.10(b)a0, which, in either case, has corporate trust powers and is acting in its fiduciary capacity.

“Enabling Resolution” means, collectively, the resolution adopted by City Council on July 6, 1998, and approved by the Mayor on July 13, 1998, as amended on October 19, 1998 and approved by the Mayor on October 27, 1998 pursuant to which the Westside TAD was created.

“Federal Funds Rate” means, for any day a fluctuating interest rate per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank Holder of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by the Majority Holder from three Federal funds brokers of recognized standing selected by the Majority Holder. Each determination of the Federal Funds Rate by the Majority Holder shall be conclusive and binding on the City.

“First Optional Redemption Date” means, (i) with respect to a Long Term Period less than or equal to 5 years, the first day of the 24<sup>th</sup> calendar month from the beginning of such Long Term Period, (ii) with respect to a Long Term Period greater than 5 years but less than or equal to 10 years, the first day of the 60<sup>th</sup> calendar month from the beginning of such Long Term Period, and (iii) with respect to a Long Term Period greater than 10 years, the first day of the 72<sup>nd</sup> calendar month from the beginning of such Long Term Period.

“Fitch” means Fitch Ratings, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City, with the consent of any Remarketing Agent and any Credit Provider during any Credit Facility Period, by written notice to the Trustee.

“Fulton County” means Fulton County, Georgia, a body politic and corporate and political subdivision of the State of Georgia.

“Government Obligations” means (a) direct obligations of the United States of America, (b) obligations the timely payment of the principal of and interest on which is unconditionally guaranteed by the full faith and credit of the United States of America, and (c) securities or

receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

“Gulch Area” means the approximately \_\_\_ acre area within the Westside TAD, bounded to the north by \_\_\_\_\_, to the south by \_\_\_\_\_, to the west by \_\_\_\_\_ and to the east by \_\_\_\_\_ and consisting of the parcels listed on Exhibit E to this Indenture, as such parcels may hereafter be combined or subdivided, as the case may be.

“Independent Counsel” means an attorney duly admitted to practice law before the highest court of any state and who is not a full-time employee, director, officer, or partner of the City.

“Index Rate” means the LIBOR Index Rate or the SIFMA Index Rate, as applicable.

“Index Rate Bond” means any Bond bearing interest at the Index Rate.

“Index Rate Determination Date” means (a) when the Applicable Index is the LIBOR Index, the LIBOR Index Reset Date and (b) when the Applicable Index is the SIFMA Index, each Thursday.

“Index Rate Interest Payment Date” means, with respect to any Bond of a Series, for each Index Rate Period, the first Business Day of each calendar month, any day that is a Conversion Date from an Index Rate Period and the maturity date for such Bond.

“Index Rate Period” means each period during which an Index Rate is in effect for a Series of Bonds.

“Interest Payment Date” means each Short Term Interest Payment Date, each Commercial Paper Interest Payment Date, each Long Term Interest Payment Date and each Index Rate Interest Payment Date.

“Interest Period” means each Short Term Period, Commercial Paper Period, Long Term Period and Index Rate Period.

“LIBOR Index” means the rate per annum determined on the basis of the rate of deposits in United States dollars of amounts equal to or comparable to the outstanding principal amount of the Index Rate Bonds, offered for a term of one month, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace Reuters Screen LIBOR01 Page or such other service or services as may be nominated by the British Bankers’ Association for the purpose of displaying London interbank offered rates for United States dollar deposits), determined as of approximately 11:00 a.m., London time, on each Computation Date, or if such rate is not available, another rate determined by the Calculation Agent of which the City has received written notice. If at any time the LIBOR Index is below zero, such LIBOR Index shall be deemed to be zero for purposes hereof.

“LIBOR Index Rate” means a per annum rate of interest equal to the sum of (i) the LIBOR Index multiplied by the Applicable Factor plus (ii) the Applicable Spread. Such rate will be rounded upward to the fifth decimal place.

“LIBOR Index Reset Date” means the first Business Day of each month.

“London Business Day” means any Business Day on which commercial banks are open for business in London, England.

“Long Term Bond” means any Bond bearing interest at the Long Term Rate.

“Long Term Interest Payment Date” means, with respect to any Bond of a Series, (a) the first day of the sixth calendar month after the beginning of the Long Term Period and the first day of each sixth calendar month thereafter until the end of the Long Term Period, (b) any redemption date with respect to all of such Bonds, and (c) the maturity date of such Bonds.

“Long Term Period” means, with respect to any Bond of a Series, any period of time that begins on the first day of a calendar month and ends on (a) a specified date that is the last day of any calendar month that is an integral multiple of 12 calendar months from the beginning of such Long Term Period (and interest shall accrue through and including the last day of such Long Term Period) or (b) the maturity date of such Bonds, as determined by the City.

“Long Term Rate” means, with respect to any Bond of a Series the product of (a) the interest rate borne by such Bonds during any Long Term Period established pursuant to Section 205 and (b) the Margin Rate Factor.

“Majority Holder” means the Holder of 51% or more in aggregate principal amount Outstanding of a Series of Bonds. The initial Majority Holder is Wells Fargo Bank, National Association, and any successors and assigns thereof.

“Mandatory Purchase Date” means, with respect to any Bond of a Series, (a) each Conversion Date, (b) each Short Term Adjustment Date, (c) each day immediately following the end of a Calculation Period, (d) [the first day of any Long Term Period][to be discussed], (e) unless there will be a mandatory purchase date pursuant to (f), the Interest Payment Date immediately before the Credit Facility Termination Date (provided that such Interest Payment Date shall precede the Credit Facility Termination Date by not less than two (2) Business Days), (f) the Interest Payment Date concurrent with the effective date of a Substitute Credit Facility, (g) the first Interest Payment Date following the occurrence of a Determination of Taxability, for which the Trustee can give notice pursuant to the provisions of Section 401(b), and (h) each Bank Purchase Date.

“Margin Rate Factor” means the greater of (a) 1.0 and (b) the product of (i) one minus the Maximum Federal Corporate Tax Rate multiplied by (ii) 1.53846. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

“Maximum Federal Corporate Tax Rate” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations

generally shall not be applicable to the Majority Holder, the maximum statutory rate of federal income taxation which could apply to the Majority Holder).

“Maximum Rate” means an interest rate per annum equal to the lesser of the maximum rate permitted by law and 12%. The Maximum Rate may be adjusted, after the date of initial issuance and delivery of Bonds of a Series, provided that (a) such Maximum Rate shall at no time exceed the maximum rate permitted by law, and (b) such adjustments to the Maximum Rate shall not become effective unless and until the Trustee shall receive (i) satisfactory evidence that the stated amount of the Credit Facility (if any) has been adjusted to reflect the adjusted Maximum Rate and (ii) an opinion of Bond Counsel satisfactory to the Trustee to the effect that such adjustment will not adversely affect the exclusion of interest on any Bonds the interest on which when issued was excludable from gross income for federal income tax purposes.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City, with the consent of any Remarketing Agent and any Credit Provider during any Credit Facility Period, by written notice to the Trustee.

“Original 2001 Bonds” means the Tax Allocation Variable Rate Bonds (Westside Project), Series 2001, issued in the original principal amount of \$14,995,000 pursuant to the Original Indenture.

“Original 2005 Bonds” means the Original 2005A Bonds and the Original 2005B Bonds.

“Original 2005A Bonds” means the Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A, issued in the original principal amount of \$72,350,000 pursuant to the Original Indenture.

“Original 2005B Bonds” means the Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B, issued in the original principal amount of \$10,215,000 pursuant to the Original Indenture.

“Original 2008 Bonds” means the Tax Allocation Variable Rate Bonds (Westside Project), Series 2008, issued in the original principal amount of \$63,760,000 pursuant to the Original Indenture.

“Original Indenture” means the Indenture of Trust dated as of December 1, 2001, between the City and the Trustee, as previously supplemented and amended.

“Outstanding” or “Bonds Outstanding” means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at, or redemption prior to, maturity;

- (b) Bonds paid or deemed paid pursuant to Article VIII;
- (c) Bonds in lieu of which others have been authenticated under Section 212 or Section 213; and
- (d) Bonds deemed tendered hereunder and for which another Bond has been issued.

“Owner” means the person or persons in whose name or names a Bond shall be registered on the books of the City kept by the Trustee for that purpose in accordance with provisions of this Indenture.

“Par” means one hundred percent (100%) of the principal amount of any Bond, or of the aggregate principal amount of the Bonds Outstanding, as the context may require, exclusive of accrued interest.

“Participant” means one of the entities which is a member of the Securities Depository and deposits securities, directly or indirectly, in the Book-Entry System.

“Pledged Bonds” means any Bonds which shall, at the time of determination thereof, be pledged to the Credit Provider pursuant to the Credit Agreement.

“Prime Rate” means, during an Index Rate Period for a Series of Bonds, on any day, the rate of interest per annum then most recently established by the Majority Holder as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Majority Holder to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the Majority Holder may make various business or other loans at rates of interest having no relationship to such rate. Each time the Prime Rate changes, the per annum rate of interest on the Bonds bearing interest at a rate, a component of which is the Prime Rate, shall change immediately and contemporaneously with such change in the Prime Rate. If the Majority Holder ceases to exist or to establish a prime rate form which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in the Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

“Project” means the Series 2001 Projects, the Series 2005 Projects, the Series 2008 Projects, or any one of them, and any other project located within the Westside TAD permitted by the Act which the City may determine to assist from time to time by the issuance of Bonds and the payment of Redevelopment Costs related to such Project from the proceeds of such Bonds pursuant to this Indenture.

“Project Fund” means the fund created in Section 605, in which there are established [a Series 2001 Project Account, a Series 2005 Project Account, a Series 2008 Project Account, and]

a separate account for each Series of Additional Bonds to the extent provided by the Supplemental Indenture providing for the issuance of such Additional Bonds.

“Purchase Price” means an amount equal to 100% of the principal amount of any Bond tendered or deemed tendered pursuant to Section 401 or 402, plus, in the case of purchase pursuant to Section 402, accrued and unpaid interest thereon to the date of purchase.

“Rating Agency” or “Rating Agencies” means any or all of Fitch, S&P and/or Moody’s.

“Record Date” means, with respect to any Bonds of a Series, (a) so long as the Bonds bear interest at the Short Term Rate, Index Rate or Commercial Paper Rate, that day which is the Business Day next preceding any Interest Payment Date for the applicable Interest Period and (b) so long as the Bonds bear interest at the Long Term Rate, the 15<sup>th</sup> day of the calendar month next preceding any Long Term Interest Payment Date.

“Redevelopment Agent” means the Atlanta Development Authority.

“Redevelopment Costs” means “Redevelopment Costs” as defined in the Act.

“Remarketing Agent” means, with respect to any Bond of a Series subject to optional or mandatory tender, the Remarketing Agent acting as such under the Remarketing Agreement or such other person appointed and serving in such capacity in connection with any Conversion Date. The Remarketing Agent must be a Participant in the Book-Entry System with respect to such Bonds. “Principal Office” of the Remarketing Agent means the principal office of the Remarketing Agent designated in the Remarketing Agreement.

“Remarketing Agreement” means, with respect to any Bond of a Series subject to optional or mandatory tender, the agreement between the City and the Remarketing Agent.

“Responsible Officer” means, when used with respect to the Trustee, any officer or agent in the corporate trust department (or any successor thereto) of the Trustee, or any other officer, agent or representative of the Trustee customarily performing functions similar to those performed by any of such officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Revenues” means (a) for each Series of Bonds, all amounts payable to the Trustee with respect to the principal or redemption price of or interest on the Bonds of such Series by the Credit Provider under a Credit Facility, if any, (b) Tax Allocation Increments, (c) all earnings derived from the investment of moneys in the Funds created by this Indenture and (d) all other receipts of the Trustee credited under the provisions of this Indenture against the payment of the principal or redemption price of or interest on the Bonds; provided, however, that so long as a Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder, the pledge of Tax Allocation Increments shall be subordinate to the pledge of Tax Allocation Increments the City has made for the benefit of the Credit Provider.

“School Board” means the Board of Education of the City.

“Securities Depository” means The Depository Trust Company, New York, New York, or its nominee, and its successors and assigns.

“Series” or “Series of Bonds” means a separate series of Bonds issued under this Indenture and any Supplemental Indenture.

“Series Project” means a Project benefiting from a related Series of Bonds.

“Series 2001 Bonds” means the \$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2001-R, issued pursuant to this Indenture.

“Series 2001 Project” means, collectively and individually, as applicable, the Projects listed on Exhibit D.

“Series 2005 Bonds” means the Series 2005A Bonds and the Series 2005B Bonds.

“Series 2005 Project” means, collectively and individually, as applicable, the Projects listed on Exhibit D.

“Series 2005A Bonds” means the \$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A-R, issued pursuant to this Indenture.

“Series 2005B Bond Additional Security” shall mean the tax allocation increments derived from ad valorem property taxes on personal property located, or to be located, on an approximate 11-acre tract of land on Centennial Olympic Park Drive and known as Fulton County Tax Parcel ID No. 14-0079-0010-147-4; provided, however, that only such tax allocation increments allocable to tax years commencing on and after January 1, 2006, shall constitute Series 2005B Bond Additional Security. The base year for calculating such increments shall be 1998.

“Series 2005B Bonds” means the \$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B-R, issued pursuant to this Indenture.

“Series 2008 Bonds” means the \$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2008-R, issued pursuant to this Indenture.

“Series 2008 Project” means, collectively and individually, as applicable, the Projects listed on Exhibit D.

“Short Term Adjustment Date” means, with respect to any Bond of a Series, the first day of each Short Term Period that has a duration different from the preceding Short Term Period, on which date the Remarketing Agent shall establish the Short Term Rate for such Short Term Period.

“Short Term Interest Payment Date” means, with respect to any Bond of a Series, for each Short Term Period, (a) the first day of the next succeeding Interest Period, (b) so long as the Short Term Period is one week in duration, the first day of each calendar month, (c) any redemption date with respect to all of the Bonds, and (d) the maturity date of the Bonds.

“Short Term Period” means, with respect to any Bond of a Series, (a) the period from the date of issuance and delivery of the Bonds to and including the next succeeding Wednesday (unless the Bonds are issued and delivered on a Wednesday, in which case the first Interest Period shall include only such Wednesday), (b) any period of time of one week’s duration (each a “Weekly Period”), provided that the period commences on Thursday of each week and continues through Wednesday of the following week, provided further, however, that if any such period is to commence after an adjustment of the Short Term Period pursuant to Section 203(c) or conversion pursuant to Section 203(d), then the first Weekly Period following such adjustment or conversion shall commence on the Short Term Adjustment Date or Conversion Date, as the case may be, and continue through the succeeding Wednesday, (c) any period of time of one calendar month’s duration, provided that the period commences on the first day of each calendar month and terminates on the last day of such calendar month, (d) any period of time of three calendar months’ duration, provided that the period commences on the first day of the first calendar month and terminates on the last day of the third calendar month, and (e) any period of time of six calendar months’ duration, provided that the period commences on the first day of the first calendar month and terminates on the last day of the sixth calendar month.

“Short Term Rate” means, with respect to any Bond of a Series, the interest rate borne by such Bonds during any Short Term Period established pursuant to Section 203.

“S&P” means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City, with the consent of any Remarketing Agent and any Credit Provider, during any Credit Facility Period, by written notice to the Trustee.

“SIFMA Index” means on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by SIFMA or any person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Remarketing Agent (if any) and effective from such date. If at any time the SIFMA Index is below zero, such SIFMA Index shall be deemed to be zero for purposes hereof.

“SIFMA Index Rate” means a rate per annum of interest equal to the sum of (i) the SIFMA Index plus (ii) the Applicable Spread.

“Special Fund” shall have the meaning set forth in the recitals.

“Subordinate Debt” means notes, bonds or obligations of the City which are secured by a pledge of Revenues, or a portion thereof, on a basis specifically subordinate to the pledge securing Bonds.

“Subordinate Pledged Revenues” means (a) a first and prior lien on that portion of the Revenues representing all amounts payable to the Trustee with respect to the principal of and interest on a series of Subordinate Debt by the Credit Provider under a Credit Facility and (b) a lien junior and subordinate to the lien on a portion of the remaining Revenues, comprised of

(i) Subordinate Tax Allocation Increments, (ii) all earnings derived from the investment of moneys in the Funds created by this Indenture and (iii) all of the receipts of the Trustee credited under this Indenture against the payment of principal or redemption price or interest on any Subordinate Debt; provided, that such lien as to (b)(i), (ii) and (iii) is expressly subordinate to the pledge thereof securing the Bonds and further provided that so long as a Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder, the pledge of Subordinate Tax Allocation Increments shall be subordinate to the pledge of the Subordinate Tax Allocation Increments the City has made for the benefit of the Credit Provider.

“Subordinate Tax Allocation Increments” means all or a portion of the Tax Allocation Increments to the extent such ad valorem tax increments are lawfully available and are pledged to secure Subordinate Debt.

“Substitute Credit Facility” means a letter of credit, line of credit, insurance policy or other credit facility securing the payment of the principal and Purchase Price of, redemption premium (if any) and interest on a Series of Bonds, meeting the requirements of, and delivered to the Trustee in accordance with Section 613, together with any and all supplements thereto, the administrative provisions of which are reasonably satisfactory to the Trustee, in substitution for a Credit Facility then in effect.

“Supplemental Indenture” means any supplement or amendment supplementing, amending or modifying the provisions of this Indenture entered into by the City and the Trustee pursuant to Article XI.

“Tax Allocation Increments” means, subject to the terms of the Enabling Resolution, the positive ad valorem tax increments, as calculated pursuant to O.C.G.A. § 36-44-3(14), generated within the Westside TAD (excluding the Gulch Area) from ad valorem property taxes levied by the City, Fulton County and the School Board.

“Tax Custodian” shall have the meaning set forth in the recitals.

“Tax Custody Agreement” shall have the meaning set forth in the recitals.

“Taxable Date” means the date as of which interest on an Index Rate Bond or a Long Term Bond is first includable in the gross income of the Bondholder (including, without limitation, any previous Bondholder) thereof as determined pursuant to a Determination of Taxability.

“Taxable Rate” means an interest rate per annum at all times equal to the product of the Index Rate or Long Term Rate then in effect multiplied by the Taxable Rate Factor.

“Taxable Rate Factor” means 1.4925.

“Tender Date” means, with respect to any Bond of a Series, (a) during any Short Term Period of other than one week’s duration, any Interest Payment Date, and (b) during any Short Term Period of one week’s duration, the seventh day (unless such day is not a Business Day, in

which case the next succeeding Business Day) following receipt by the Trustee of notice from the Owner that such Owner has elected to tender Bonds (as more fully described in Section 402).

“Trust Estate” means the property conveyed to the Trustee pursuant to the Granting Clauses hereof.

“Westside TAD” means The Westside Tax Allocation Bond District Number 1, As Amended - Atlanta/Westside created by City Council by a resolution, adopted on July 6, 1998, and approved by the Mayor on July 13, 1998, as amended on October 19, 1998, and approved on October 27, 1998.

## **Section 102. Interpretation.**

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Holder,” “Owner,” “owner,” “registered owner” and “person” shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as persons. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific Sections of the Code refer to such Sections of the Code and all successor or replacement provisions thereto.

## **ARTICLE II**

### **THE BONDS**

#### **Section 201. Authorized Amounts of Bank Bonds.**

(a) The Original 2001 Bonds were issued under the Original Indenture on December 20, 2001, in the original aggregate principal amount of \$14,995,000. The Original 2001 Bonds are reissued and designated hereunder as the “\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2001-R” (the “Series 2001 Bonds”).

(b) The Original 2005 Bonds were issued under the Original Indenture on December 8, 2005, in the original aggregate principal amount of \$82,565,000. The Original 2005 Bonds were issued in two subseries designated “\$72,350,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A” and “\$10,215,000 Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B.” The Original 2005A Bonds are reissued and designated hereunder as the “\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A-R” (the “Series 2005A Bonds”), and the Original 2005B Bonds are reissued and designated hereunder as the “\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B-R” (the “Series 2005B Bonds”).

(c) The Series 2008 Bonds were issued under the Original Indenture on \_\_\_\_\_, 2008, in the original aggregate principal amount of \$63,760,000. The Original 2008 Bonds are reissued

and designated hereunder as the “\$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 2008-R” (the “Series 2008 Bonds”).

**Section 202. Issuance and Terms of Bonds.**

(a) During any Short Term Period or Commercial Paper Period, Bonds of a Series shall be issuable as fully registered Bonds without coupons in the denomination of \$100,000, or any multiple of \$5,000 in excess thereof. During any Long Term Period, Bonds of a Series shall be issuable as fully registered Bonds without coupons in the denomination of \$5,000 or any multiple thereof. Unless the City shall otherwise direct, in writing, Bonds of a Series shall be lettered “R” and shall be numbered consecutively from 1 upward.

(b) Each Bond of a Series shall be dated the date of authentication and delivery, and shall bear interest from such date, and thereafter from the Interest Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication thereof is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication thereof, or unless no interest has been paid or duly provided for on such Bonds, then from the date of authentication and delivery of such Bonds, at the rates per annum and on the dates provided for in this Indenture. Notwithstanding the foregoing, if any Bond of a Series is authenticated after any Record Date and before the following Interest Payment Date, such Bond shall bear interest from such following Interest Payment Date; provided, however, that if the City shall default in the payment of interest due on such Interest Payment Date, then such Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on such Bonds, from the date of initial authentication and delivery of the Bonds. The Bonds of a Series shall bear interest at the Short Term Rate, the Commercial Paper Rate or the Long Term Rate, as the same shall be determined from time to time pursuant to this Article, plus interest on overdue installments of interest, to the extent permitted by law, at the rate of interest borne by the Series. During the Commercial Paper Period and any Short Term Period with a duration of one week or one month, interest shall be calculated on the basis of actual days elapsed in a 365- or 366-day year, as the case may be. During the Long Term Period and any Short Term Period with a duration of three months or six months, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Anything herein contained to the contrary notwithstanding, the interest rate on any Bond shall not exceed the Maximum Rate.

(a) The Series 2001 Bonds shall mature on December 1, 2022. The Series 2005 Bonds shall mature on December 1, 2023. The Series 2008 Bonds shall mature on December 1, 2037. The Series 2008 Bonds are subject to scheduled mandatory redemption on December 1 in the following years and in the following principal amounts at a redemption price equal to 100% thereof, plus accrued interest to the redemption date:

<u>December 1 of the Year</u>	<u>Principal Amount</u>
2023	\$27,830,000
2037*	35,930,000

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\*Maturity.

(b) The principal of and premium, if any, on the Bonds shall be payable in lawful money of the United States of America at the Corporate Trust Office of the Trustee, or of its successor in trust, as paying agent. The Purchase Price of the Bonds shall be payable in lawful money of the United States of America by the Trustee to the Owner of Bonds entitled to receive such Purchase Price at its address shown on the registration books maintained by the Trustee, unless otherwise instructed by such Owner in writing at least 24 hours prior to the time such Purchase Price is due. Payment of interest on the Bonds shall be made to the Owner thereof on the applicable Record Date by check mailed by the Trustee to such Owner at its address as it appears on the registration books maintained by the Trustee or at such other address as is furnished to the Trustee in writing by such Owner, or in such other manner as may be mutually acceptable to the Trustee and the Owner of any Bond. Interest, premium, if any, and principal due to any person holding any Bonds in an aggregate principal amount of \$1,000,000 or more will be paid, upon the written request of any such holder (delivered to the Trustee at least three (3) days prior to the due date of any such payment), by wire transfer of immediately available funds to an account designated by such holder. While any Series is held under the Book-Entry System, interest on Bonds of such Series shall be paid by wire transfer to the Securities Depository or its nominee.

### **Section 203. Short Term Period.**

(a) From any Conversion Date after which Bonds of a particular Series will bear interest at a Short Term Rate until the next following Conversion Date or the maturity date of such Bonds, such Bonds will bear interest at a Short Term Rate, as hereinafter described.

(b) The Short Term Rate for each Short Term Period will be determined by the Remarketing Agent (and the authority to so determine the rate is hereby delegated by the City to the Remarketing Agent) on the first day of each Short Term Period (or if such day is not a Business Day the immediately preceding Business Day), as follows: the interest rate for each Short Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell Bonds of a particular Series at a price of Par on such date. Upon determining the Short Term Rate for each Short Term Period, the Remarketing Agent shall notify the Trustee and the City of such rate by telephone or such other manner as may be appropriate by not later than 2:00 P.M. New York City time on the date of such determination, which notice shall be promptly confirmed in writing. The Trustee may conclusively rely on and act in accordance with any such telephonic instruction. No Short Term Rate shall be determined for a Short Term Period beginning on or after the Business Day immediately preceding an Interest Payment Date, and the Bonds of a particular Series shall bear interest during such Short Term Period at the rate in effect for the immediately preceding Short Term Period.

(c) The City shall instruct the Remarketing Agent, not later than the 20<sup>th</sup> day prior to the Short Term Adjustment Date, to determine the Short Term Rate on the basis of a Short Term Period as designated in such instruction of one week, one calendar month, three calendar months

or six calendar months. In the event the City elects to adjust the duration of the Short Term Period for Bonds of a particular Series, the City shall notify the Trustee in writing, on the date such instruction is provided to the Remarketing Agent, of such an election with respect to the Short Term Period and of the Short Term Adjustment Date on which such new Short Term Period shall commence, and if such Short Term Period is to be a Credit Facility Period, shall also furnish to the Trustee, with such notification, the Credit Facility unless already held by the Trustee. The duration of the Short Term Period may be adjusted effective only on the day following the last day of the preceding Short Term Period; provided, however, that a Short Term Period of one week's duration may be adjusted to any other authorized duration only on the first day of each calendar month. In the event (i) the duration of the Short Term Period is to be adjusted from one week to another authorized duration for a Short Term Period (pursuant to the provisions of this Section 203), or (ii) if the Conversion Option has been exercised and the new Interest Period will begin on the first day of a calendar month, and the expiration of the last Short Term Period prior to the first day of the calendar month does not occur on the last day of a calendar month, then in such event the duration of such Short Term Period shall be increased or decreased at the discretion of the Remarketing Agent, by not more than six days, in order to cause the expiration of such Interest Period to occur on the last day of the calendar month.

(d) If the City has exercised the Conversion Option to convert Bonds of a particular Series to a Short Term Period, the City shall instruct the Remarketing Agent, not later than the 20<sup>th</sup> day prior to the Conversion Date, to determine the Short Term Rate on the basis of a Short Term Period selected in exercising the Conversion Option.

(e) The determination of the Short Term Rate (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider (if any), and the Owners of such Bonds. If for any reason the Remarketing Agent shall fail to establish the Short Term Rate for any Short Term Period, the Bonds of such Series shall bear interest during such Short Term Period at the Short Term Rate in effect during the immediately preceding Short Term Period.

#### **Section 204. Commercial Paper Period.**

(a) From any Conversion Date after which Bonds of a particular Series will bear interest at a Commercial Paper Rate until the next following Conversion Date, such Bonds will bear interest at the various Commercial Paper Rates for the various Calculation Periods, as hereinafter described. During any Commercial Paper Period, any Bond of a particular Series may have a different Calculation Period and a different Commercial Paper Rate from any other Bond of the same Series.

(b) At or prior to 12:00 noon New York City time on any Conversion Date after which Bonds of a particular Series will bear interest at the Commercial Paper Rate and the day immediately after the end of such Calculation Period (or if such day is not a Business Day the immediately preceding Business Day), the Remarketing Agent shall establish Calculation Periods with respect to any Series for which no Calculation Period is currently in effect. The Remarketing Agent shall, and the City hereby delegates to the Remarketing Agent the authority to, select the Calculation Periods and the applicable Commercial Paper Rates that, together with all other Calculation Periods and related Commercial Paper Rates, in the sole judgment of the Remarketing Agent, will result in the lowest overall borrowing cost on such Bonds or are otherwise in the best

financial interests of the City, as determined in consultation with the City; provided, however, during any Credit Facility Period, no Bond of a Series shall have a Calculation Period of less than three (3) days. Any Calculation Period established hereunder may not extend beyond (i) any Conversion Date, (ii) during any Credit Facility Period, the second Business Day next preceding the scheduled Credit Facility Termination Date, or (iii) the day prior to the maturity date of the Bonds of the respective Series.

(c) On the first day of each Calculation Period (or if such day is not a Business Day the immediately preceding Business Day), the Remarketing Agent shall, and the City hereby delegates to the Remarketing Agent the authority to, set rates by 12:00 noon New York City time for Bonds of a particular Series for such Calculation Period. With respect to each Calculation Period, the interest rate shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell such Bonds at a price of Par on the date of such determination. Upon determining the rate for each Calculation Period, the Remarketing Agent shall notify the Trustee and the City of such rates and the related Calculation Periods by telephone or such other manner as may be appropriate by not later than 2:00 P.M. New York City time on the date of such determination, which notice shall be promptly confirmed in writing. The Trustee may conclusively rely on and act in accordance with any such telephonic instruction.

(d) The determination of the Commercial Paper Rates and Calculation Periods (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider (if any), and the Owners of Bonds of the respective Series. If for any reason the Remarketing Agent shall fail to establish the Commercial Paper Rates or the Calculation Periods for any Bonds during the Commercial Paper Period, or in the event no Calculation Period may be established pursuant to the terms of Section 204(b), then the Calculation Period for any such Bond shall be a period of 30 days and the Commercial Paper Rate for such Calculation Period shall be 70% of the interest rate applicable to 91-day United States Treasury bills determined on the basis of the average per annum discount rate at which 91-day United States Treasury bills shall have been sold at the most recent Treasury auction conducted during the preceding 30 days.

## **Section 205. Long Term Period.**

(a) From any Conversion Date after which Bonds of a particular Series will bear interest at a Long Term Rate until the next following Conversion Date or the maturity date of such Bonds, such Bonds will bear interest at a Long Term Rate, as hereinafter described.

(b) The City hereby delegates to the Remarketing Agent the authority to determine the Long Term Rate, and the Long Term Rate for each Long Term Period will be determined by the Remarketing Agent, as follows: the interest rate for each Long Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds of a particular Series at a price of Par on the date on which the Long Term Period begins. The Long Term Rate shall be determined by the Remarketing Agent not later than the fifth day preceding the commencement of such Long Term Period, and the Remarketing Agent shall notify the Trustee and the City thereof by telephone or such other

manner as may be appropriate by not later than 2:00 P.M. New York City time on such date, which notice shall be promptly confirmed in writing.

(c) The City shall instruct the Remarketing Agent, not later than the 20<sup>th</sup> day prior to the commencement of such Long Term Period, to determine the Long Term Rate on the basis of a Long Term Period ending on a specified date that is the last day of any calendar month that is an integral multiple of 12 calendar months from the beginning of such Long Term Period or the maturity of a particular Series of Bonds. In the event the City elects, at the end of a Long Term Period to have another Long Term Period applicable to the Bonds of a particular Series, the City shall notify the Trustee and the Remarketing Agent in writing, not later than the 20<sup>th</sup> day prior to the commencement of such new Long Term Period, of such an election with respect to the Long Term Period and of the date on which such new Long Term Period shall begin, and shall furnish to the Trustee, with such notification, an opinion of Bond Counsel to the effect that such election of such Long Term Period will not adversely affect the exclusion from gross income for federal income tax purposes of interest on such Bonds. The delivery by the City to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the City notification described above on the first day of such Long Term Period is a condition precedent to the beginning of such Long Term Period. In the event that the City fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence or does not elect to have another Long Term Period apply or exercise the Conversion Option, the Bonds of the respective Series shall be deemed to be in a Short Term Period of one week's duration and the Short Term Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on such Bonds was to be set.

(d) The determination of the Long Term Rate (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider (if any), and the Owners of Bonds of the respective Series. If for any reason the Remarketing Agent shall fail to establish the Long Term Rate for any Long Term Period, such Bonds shall be deemed to be in a Short Term Period of one week's duration and the Short Term Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on such Bonds was to be set.

(e) From and after any Taxable Date, the interest rate on the Bonds of a Series in a Long Term Period shall be established at a rate at all times equal to the Taxable Rate.

(f) Notwithstanding the foregoing but subject to the interest rate limitations herein, upon the occurrence and continuation of an Event of Default, from and after the effective date of such Event of Default, the interest rate for Bonds of a Series in a Long Term Period shall be established at a rate at all times equal to the greater of (i) the Default Rate and (ii) the interest rate that otherwise would be applicable to such Bonds but for the provisions of this subparagraph (f).

(g) If the Holder of a Long Term Bond incurs any loss, cost or expense (including without limitation, any loss, cost, expense or premium incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Holder to fund or maintain any Long Term Bond or the relending or reinvesting of such deposits or amounts paid or prepaid to such

Holder) as a result of the occurrence of any Event of Default, then, upon the demand of such Holder, the City shall pay to such Holder such amount as will reimburse such Holder for such loss, cost or expense. The amount as determined by such Holder shall be conclusive and binding upon the City absent manifest error.

(h) Notwithstanding Section 612(a), a Credit Facility is not required to be provided with respect to a particular series of Bonds during any period in which such Bonds bear interest at a Long Term Rate.

(i) If a proposed conversion of Interest Period for Bonds of a Series is from a Long Term Rate, (i) the Conversion Date must be an Interest Payment Date and (ii) all conditions set forth in the Continuing Covenants Agreement relating to such Series of Bonds must be satisfied.

### **Section 206. Conversion Option.**

(a) The City shall have the option (the “Conversion Option”) to direct a change in the type of Interest Period for Bonds of a particular Series to another type of Interest Period by delivering to the Trustee and the Remarketing Agent written instructions (the “Conversion Notice”) setting forth (i) the Conversion Date, (ii) the new type of Interest Period, (iii) if the new type of Interest Period is a Short Term Period or a Long Term Period, the duration of such period and (iv) whether such Interest Period will be a Credit Facility Period. The Conversion Notice shall be delivered at least 20 days prior to the first day of such Interest Period. If the new Interest Period is a Long Term Period and will be a Credit Facility Period, the Conversion Notice will be accompanied by a Credit Facility, Substitute Credit Facility, or by an amendment to any existing Credit Facility, providing for the payment of the redemption premium (if any) on the Bonds during such Long Term Period. If a new Index Rate is to be in effect immediately following such Conversion Date, the Conversion Notice shall state (a) the applicable Bank Purchase Date, (b) the Applicable Index and (c) the Applicable Factor, if any. If the conversion is from an Index Rate Period to a new Index Rate Period and the Majority Holder is unchanged, the Majority Holder must consent to such conversion. With the Conversion Notice the City shall furnish to the Trustee an opinion of Bond Counsel to the effect that such change in Interest Period will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the respective Series of Bonds. The delivery by the City to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the City notification described above on the Conversion Date is a condition precedent to the change in the type of Interest Period. In the event that the City fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence, the Bonds shall continue in the Interest Period in place at the time of exercise of the Conversion Option.

(b) Any change in the type of Interest Period must comply with the following: (i) the Conversion Date must be the day following the end of an Interest Period and (ii) no change in Interest Period shall occur after an Event of Default shall have occurred and be continuing.

### **Section 207. Execution.**

The Bonds of each Series shall be executed by the Chief Operating Officer and Attesting Officer and shall be sealed with the official seal or a facsimile of the official seal of the City. The

facsimile signature of the Chief Operating Officer and the Attesting Officer may be imprinted on the Bonds instead of their manual signatures. Bonds bearing the manual or facsimile signatures of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery of such Bonds such person ceased to hold such office.

Prior to the preparation of definitive Bonds, the City may issue interim receipts, interim certificates, or temporary Bonds, exchangeable in any case for definitive Bonds upon the issuance of definitive Bonds.

### **Section 208. Authentication.**

The Bonds of each Series shall bear a certificate of authentication, substantially in the form attached as Exhibit A to this Indenture, duly executed by the Trustee. The Trustee shall authenticate each Bond with the manual signature of an authorized agent of the Trustee but it shall not be necessary for the same agent to authenticate all of the Bonds of any series. Only such authenticated Bonds shall be entitled to any right or benefit under this Indenture and such certificate on any Bond issued hereunder shall be conclusive evidence that the Bond has been duly issued and is secured by the provisions hereof.

In the event that any Bond is deemed tendered to the Trustee as provided in Section 401 or 402 but is not physically so tendered, the City shall execute and the Trustee shall authenticate a new Bond of like denomination of that deemed tendered.

### **Section 209. Form of Bank Bonds.**

The Bank Bonds and the certificate of authentication to be endorsed thereon are to be in substantially the form set forth in Exhibit A attached hereto, with appropriate variations, omissions and insertions as permitted or required by this Indenture. The form of each Series of Additional Bonds shall be as set forth in the supplemental indenture providing for their issuance.

### **Section 210. Authentication and Delivery of Replacement Bank Bonds.**

Prior to the authentication and delivery by the Trustee of the replacement Bank Bonds, there shall be filed or deposited with the Trustee:

(a) A certified copy of a resolution or resolutions of the City authorizing (i) the execution and delivery of this Indenture and the Continuing Covenants Agreement and (ii) the reissuance of the Bank Bonds.

(b) An original executed counterpart of this Indenture.

(c) An original executed counterpart of the Continuing Covenants Agreement.

(d) A copy of the transcript of the proceeding in the Fulton County Superior Court validating the Bank Bonds.

(e) A no adverse effect opinion of Bond Counsel with regards to the Bank Bonds.

(f) A written opinion of Bond Counsel to the effect that this Indenture and the Continuing Covenants Agreement have been duly authorized, executed and delivered by the City and constitute enforceable agreements of the City, subject to bankruptcy and equitable principles.

(g) A written Opinion of Counsel to the City to the effect that this Indenture and the Continuing Covenants Agreement have been duly authorized, executed and delivered by the City and are enforceable against the City, subject to bankruptcy and equitable principles.

(h) A request and authorization of the City, signed by the Chief Financial Officer, to the Trustee to authenticate and deliver the replacement Bank Bonds to such person or persons named therein.

Pursuant to the Original Indenture, the proceeds of the Original 2001 Bonds, the Original 2005 Bonds and the Original 2008 Bonds were delivered to the Trustee on their original dates of issuance. The Trustee deposited such proceeds in accordance with the Original Indenture.

#### **Section 211. Issuance of Additional Bonds.**

The City may at any time issue one or more Series of Additional Bonds (a) to finance or refinance Redevelopment Costs within the Westside TAD, (b) to refund all or a portion of any Series of Bonds and (c) for a combination of such purposes. Each such Series of Additional Bonds shall be issued pursuant to a Supplemental Indenture and shall be equally and ratably secured under this Indenture with the Bank Bonds and any Additional Bonds issued pursuant to this Section, without preference, priority or distinction of any Bonds over any other Bonds. Unless provided otherwise in a Supplemental Indenture, all such Additional Bonds shall be in substantially the same form as the Bank Bonds, but shall bear such date or dates, have such maturity amount or amounts and date or dates, and redemption dates, and contain an appropriate series designation as shall be approved by the City. No payments shall be made with respect to any Additional Bonds from a Credit Facility in effect for any other Series of Bonds unless the related Credit Agreement expressly provides for such payment.

Prior to the authentication and delivery by the Trustee of Additional Bonds, the following conditions shall be satisfied or there shall be filed or deposited with the Trustee:

(a) At least ten (10) days prior to the issuance of Additional Bonds, the City shall notify any Credit Provider, the Trustee and any Remarketing Agent of its intent to issue Additional Bonds and the expected issue date.

(b) A certified copy of a resolution or resolutions of the City authorizing (i) the execution and delivery of a Supplemental Indenture and an amendment to the Remarketing Agreement, if any, and (ii) the issuance, sale, execution and delivery of the Additional Bonds.

(c) An original executed counterpart of a Supplemental Indenture.

(d) An original executed counterpart of an amendment to the Remarketing Agreement.

(e) Written evidence that any Credit Provider shall have consented to the issuance of such Additional Bonds.

(f) A Credit Facility for such Bonds satisfying the requirements of Section 613, if any.

(g) A certificate signed by the Chief Operating Officer and the Chief Financial Officer and dated the date of issuance of the Additional Bonds, to the effect that to the best of their knowledge, upon and immediately following the issuance, no Event of Default under this Indenture, and no event or condition which with the giving of notice or lapse of time or both, would become an Event of Default under this Indenture, will have occurred and be continuing, or, if such Event of Default or event or condition has occurred and is continuing, it will be cured upon the issuance of the Additional Bonds.

(h) An Opinion of Counsel for the City, stating that the Supplemental Indenture and the amendment to the Remarketing Agreement have been duly authorized, executed and delivered by the City and are enforceable against the City, subject to bankruptcy and equitable principles.

(i) An opinion of Bond Counsel that the issuance of such Additional Bonds has been duly authorized, that such Additional Bonds are valid and binding limited obligations of the City and that the issuance of such Additional Bonds will have no adverse effect upon the excludability from gross income for federal income tax purposes of the interest on any Bonds then Outstanding the interest on which when issued was excludable from gross income for federal income tax purposes.

(j) A request and authorization of the City, signed by the Chief Financial Officer, to the Trustee to authenticate and deliver the Additional Bonds to such person or persons named therein upon payment to the Trustee for the account of the City of a specified sum.

The Trustee shall apply the net proceeds of Additional Bonds in accordance with the terms of the Supplemental Indenture.

## **Section 212. Mutilated, Lost, Stolen or Destroyed Bonds.**

In the event any Bond is mutilated, lost, stolen, or destroyed, the City shall execute and the Trustee shall authenticate a new Bond of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the City or the Trustee, and in the case of any lost, stolen, or destroyed Bond, there first shall be furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the City and the Trustee, together with an indemnity satisfactory to them. In the event any such Bond shall have matured, the Trustee, instead of issuing a duplicate Bond, may pay the same without surrender thereof, making such requirements as it deems fit for its protection, including a lost instrument bond. The City and the Trustee may charge the Owner of such Bond with their reasonable fees and expenses for such service. In authenticating a new Bond executed by the City, the Trustee may conclusively assume that the City is satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Bond or with any indemnity furnished in connection therewith.

### **Section 213. Transfer of Bonds; Persons Treated as Owners.**

The Trustee shall keep books for the transfer of the Bonds as provided in this Indenture. Upon surrender for transfer of any Bond at the Corporate Trust Office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the City shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds in authorized denominations for a like aggregate principal amount. Subject to the provisions of Section 216 relating to the transfer of ownership of Bonds held in the Book-Entry System, any Bond, upon surrender thereof at the Corporate Trust Office of the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or its attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of any denominations authorized by this Indenture in an aggregate principal amount equal to the principal amount of such Bond. In each case, the Trustee may require the payment by the Owner of the Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The Trustee shall not be required to exchange or register a transfer of (a) any Bonds of a Series during the fifteen day period next preceding the selection of Bonds of such Series to be redeemed and thereafter until the date of the mailing of a notice of redemption of Bonds selected for redemption, or (b) any Bonds of a Series selected, called or being called for redemption in whole or in part except, in the case of any Bond of a Series to be redeemed in part, the portion thereof not so to be redeemed; provided that the foregoing shall not apply to the registration or transfer of any Bond of a Series which has been tendered to the Trustee pursuant to Section 402, and in any such case, for purposes of selection for redemption, the Bond so tendered and the Bond issued to the transferee thereof pursuant to Section 404 shall be deemed and treated as the same Bond. If any Bond shall be transferred and delivered pursuant to Section 404(a) after such Bond has been (i) called for redemption, (ii) accelerated pursuant to Section 902, or (iii) tendered pursuant to Sections 401 or 402, the Trustee shall deliver to such transferee a copy of the applicable redemption notice, acceleration notice, or tender notice indicating that the Bond delivered to such transferee has previously been called for redemption, acceleration or tender, and such Bonds shall not be delivered by the Trustee to the transferee until the transferee shall acknowledge receipt of such notice in writing.

Subject to the provisions of Section 216 relating to Bonds held in the Book-Entry System, the Trustee and the City may treat the person in whose name a Bond is registered as the absolute Owner thereof for all purposes, and neither the City nor the Trustee shall be bound by any notice or knowledge to the contrary, but such registration may be changed as hereinabove provided. All payments made to the Owner shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

### **Section 214. Destruction of Bonds.**

Subject to the provisions of Section 216 relating to Bonds held in the Book-Entry System, whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this

Indenture, or for replacement pursuant to Section 211, such Bond shall be promptly cancelled and disposed of by the Trustee in its customary manner.

### **Section 215. Temporary Bonds.**

Until Bonds of a Series in definitive form are ready for delivery, the City may execute, and upon the written request of the City, the Trustee shall authenticate and deliver, subject to the provisions, limitations and conditions set forth above, one or more Bonds in temporary form, whether printed, typewritten, lithographed or otherwise produced, substantially in the form of the definitive Bonds, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the liens and benefits of this Indenture.

Upon presentation and surrender of any Bond or Bonds in temporary form to the Trustee, the City shall, upon receipt of notice of such surrender from the Trustee, execute and deliver to the Trustee, and the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Trustee without making any charge therefor to the Owner of such Bond in temporary form. Notwithstanding the foregoing, Bonds in definitive form may be issued hereunder in typewritten form.

### **Section 216. Book-Entry System.**

Except as otherwise provided in a Supplemental Indenture, upon the initial issuance and delivery of the Bonds of a Series, such Bonds shall be issued in the name of the Securities Depository or its nominee, as registered owner of such Bonds, and held in the custody of the Securities Depository or its designee. A single certificate (or such number of certificates required by the procedures of the Securities Depository) will be issued and delivered to the Securities Depository (or its designee) for such Bonds, and the Beneficial Owners will not receive physical delivery of Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for such Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Bonds is to receive, hold or deliver any Bond certificate. The City and the Trustee will recognize the Securities Depository or its nominee as the Owner for all purposes, including notices.

The City, the Trustee and the Remarketing Agent may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System with respect to the Bonds and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a Book-Entry System at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry Bonds to produce the same effect. Any provision hereof permitting or requiring delivery of

Bonds shall, while the Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in this Indenture and the Bonds with respect to the rights of Participants and Beneficial Owners, when a Book-Entry System is in effect, the City, the Trustee and the Remarketing Agent may treat the Securities Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of (i) payment of the principal or Purchase Price of, premium, if any, and interest on the Bonds or portion thereof to be redeemed or purchased, (ii) giving any notice permitted or required to be given to Bondholders under this Indenture, and (iii) the giving of any direction or consent or the making of any request by the Bondholders hereunder, and none of the City, the Trustee, nor the Remarketing Agent shall be affected by any notice to the contrary. None of the City, the Trustee or the Remarketing Agent will have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other person which is not shown on the Bond Register, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Participant; (ii) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or Purchase Price of, or interest on, any Bonds; (iii) the delivery of any notice by the Securities Depository or any Participant; (iv) the selection of the Participants or the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds; or (v) any consent given or any other action taken by the Securities Depository or any Participant. The Trustee shall pay all principal of, and premium, if any, and interest on the Bonds registered in the name of a nominee of the Securities Depository only to or “upon the order of” the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in the State of Georgia), and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of, premium, if any, and interest on such Bonds to the extent of the sum or sums so paid.

The City in issuing the Bonds of a Series may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The City will promptly notify the Trustee of any change in the “CUSIP” numbers.

The Book-Entry System may be discontinued by the Trustee and the City with respect to one or more Series, at the written direction and expense of the City, and the City and the Trustee will cause the delivery of Bond certificates to such Beneficial Owners of the Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under either of the following circumstances:

(a) The Securities Depository determines to discontinue providing its service with respect to the Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving 30 days’ notice to the City, and the Trustee and discharging its responsibilities with respect thereto under applicable law.

(b) The City determines not to continue the Book-Entry System through a Securities Depository.

In the event the Book-Entry System is discontinued, the Trustee shall mail a notice to the Securities Depository for distribution to the Beneficial Owners stating that the Securities Depository will no longer serve as securities depository, the procedures for obtaining Bonds of such Series and the provisions of this Indenture which govern the Bonds, including, but not limited to, provisions regarding authorized denominations, transfer and exchange, principal and interest payment and other related matters.

When the Book-Entry System is not in effect for a particular Series, all references herein to the Securities Depository shall be of no further force or effect and the Trustee shall, at the expense and written direction of the City, issue Bonds of such Series directly to the Beneficial Owners.

The Trustee reserves the right to initially issue the Bonds of a Series directly to the Beneficial Owners of such Bonds if the Trustee receives an opinion of Bond Counsel that determines that use of the Book-Entry System would cause the interest on such Bonds to be included in gross income of the Owners for federal income tax purposes.

#### **Section 217. Index Rate Period**

(a) From any Conversion Date after which the Bonds of a particular Series will bear interest at an Index Rate until the next following Conversion Date, such Bonds shall, subject to Section 217(e) below, bear interest at the LIBOR Index Rate or SIFMA Index Rate, as from time to time in effect. The Applicable Index shall be established by the Chief Financial Officer on or before the initial period commences and the initial Index Rate for the initial period shall be established by a certificate of the Calculation Agent on the date of conversion of the Bonds to the Index Rate Period.

(b) On or before the Business Day immediately preceding the first day of the applicable Index Rate Period, the Remarketing Agent shall determine the Applicable Spread. If for any reason the Remarketing Agent shall fail to determine the Applicable Spread, the Applicable Spread shall remain unchanged and shall equal the Applicable Spread during the immediately preceding Index Rate Period.

(c) On each Computation Date, the Calculation Agent shall determine the Index Rate. The Index Rate as determined by the Calculation Agent will be the interest rate to be borne by the Bonds of a Series (A) when the Applicable Index is the LIBOR Index (i) with respect to the initial Computation Date in any Index Rate Period, from the first day of such Index Rate Period through and including the first Business Day of the next calendar month, and (ii) for each Computation Date thereafter, from the first Business Day after such Computation Date through and including the first Business Day of the next calendar month and (B) when the Applicable Index is the SIFMA Index (i) with respect to the initial Computation Date in any Index Rate Period, from the first day of such Index Rate Period through the following Wednesday and (ii) for each Computation Date thereafter, from the first Thursday after such Computation Date through the following Wednesday (each a "Weekly Index Period"), provided that, if the applicable

Computation Date (other than the initial Computation Date in any Index Rate Period) is a day following a Thursday in any week, the applicable Weekly Index Period shall run from Thursday preceding the Computation Date through the following Wednesday. The Calculation Agent shall promptly notify the Chief Financial Officer and the Trustee of the Index Rate.

(d) From and after any Taxable Date, the interest rate on the Bonds of a Series in an Index Rate Period shall be established at a rate at all times equal to the Taxable Rate.

(e) Notwithstanding the foregoing but subject to the interest rate limitations herein, upon the occurrence and continuation of an Event of Default, from and after the effective date of such Event of Default, the interest rate for Bonds of a Series in an Index Rate Period shall be established at a rate at all times equal to the greater of (i) the Default Rate and (ii) the interest rate that otherwise would be applicable to such Bonds but for the provisions of this subparagraph (e).

(f) If the Holder of an Index Rate Bond incurs any loss, cost or expense (including without limitation, any loss of the Applicable Spread or any loss, cost, expense or premium incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Holder to fund or maintain any Index Rate Bond or the relending or reinvesting of such deposits or amounts paid or prepaid to such Holder) as a result of the occurrence of any Event of Default, then, upon the demand of such Holder, the City shall pay to such Holder such amount as will reimburse such Holder for such loss, cost or expense. The amount as determined by such Holder shall be conclusive and binding upon the City absent manifest error.

(g) Notwithstanding Section 612(a), a Credit Facility is not required to be provided with respect to a particular series of Bonds during any period in which such Bonds bear interest at an Index Rate.

(h) If a proposed conversion of Interest Period for Bonds of a Series is from an Index Rate, (i) the Conversion Date must be an Interest Payment Date and (ii) all conditions set forth in the Continuing Covenants Agreement relating to such Series of Bonds must be satisfied.

### **ARTICLE III**

#### **REDEMPTION OF BONDS BEFORE MATURITY**

##### **Section 301. Extraordinary Redemption**

During any Long Term Period, the Bonds of a Series are subject to redemption in whole or in part (in an amount of not less than \$100,000) by the City, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date, in the event all or substantially all of the Series Projects shall have been damaged or destroyed, or there occurs the condemnation of all or substantially all of the Series Projects benefiting from the proceeds of a related Series of Bonds or the taking by eminent domain of such use or control of the Series Projects benefiting from the proceeds of a related Series of Bonds as to render the Series Projects, in the judgment of the City, unsatisfactory for their intended use for a period of time longer than one year.

### **Section 302. Optional Redemption**

(a) During any Short Term Period, the Bonds of a Series are subject to redemption by the City, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine (except as otherwise provided in Section 306), at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date.

(b) On any Conversion Date or Short Term Adjustment Date or on the day following the end of the Calculation Period if such day is the end of the Calculation Period for all Bonds of a Series, such Bonds are subject to redemption by the City, in whole or in part, less than all of such Bonds to be selected by lot or in such manner as the Trustee shall determine (except as otherwise provided in Section 306), at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date.

(c) During any Long Term Period, the Bonds of a Series are subject to redemption by the City, on or after the first optional redemption date determined by the City, in whole or in part at any time, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine (except as otherwise provided in Section 306), on the redemption dates and at the redemption prices (expressed as percentages of principal amount) to be determined by the City on or prior to the Conversion Date commencing such Long Term Period provided that such prices do not reflect a redemption premium exceeding three (3) percent (%).

(d) Subject to any limitations set forth in a Continuing Covenants Agreement, during any Index Rate Period or Long Term Period, the Bonds of a Series are subject to redemption on any Interest Payment Date at the direction of the City, in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption date.

### **Section 303. Notice of Redemption.**

(a) The City shall exercise its option to cause a redemption of any Bonds of a Series by giving written notice to the Trustee, and during an Index Rate Period or Long Term Period, the Majority Holder, not less than forty-five (45) days prior to the date selected for redemption. To exercise any optional or extraordinary redemption during an Index Rate Period or Long Term Period, the City shall deliver a certificate of the Chief Financial Officer certifying that the conditions precedent to such redemption set forth in a Continuing Covenants Agreement have been met.

(b) Notice of the call for redemption, identifying the Bonds of a particular Series or portions thereof to be redeemed, shall be given by the Trustee by mailing a copy of the redemption notice as provided to it by the City by first class mail at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption to the Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books. Any notice mailed as provided in this Section 303 shall be conclusively presumed to have been duly given, whether

or not the Owner receives the notice. No notice shall be required with respect to redemption pursuant to Section 302(b).

Failure to mail any such notice, or the mailing of defective notice, to any Owner, shall not affect the proceeding for redemption as to any Owner to whom proper notice is mailed. Notwithstanding the foregoing provisions of this Section 303, delivery by the Trustee of a copy of a redemption notice to a transferee of a Bond which has been called for redemption, pursuant to the requirements of Section 213, shall be deemed to satisfy the requirements of the first sentence of this Section 303 with respect to any such transferee.

(c) In addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in (a) above. Each further notice of redemption given hereunder shall contain the information required in (a) above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed. Each further notice of redemption shall be sent at least 30 days before the redemption date by registered or certified mail, or overnight delivery service, to all of the following registered securities depositories then in the business of holding substantial amounts of bonds of the type comprising the Bonds (such depositories now being The Depository Trust Company of New York, New York; Midwest Securities Trust Company of Chicago, Illinois; and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of redemption of bonds such as the Bonds (such as Financial Information Inc.'s Financial Daily Called Bond Service, Interactive Data Corporation's Bond Service, Kenny Information Service's Called Bond Service, Moody's Investors Service's Municipal and Government and Standard & Poor's Called Bond Record). Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

#### **Section 304. Redemption Payments.**

Pursuant to Section 612, during any Credit Facility Period, the Trustee is authorized and directed to draw upon the Credit Facility in order to provide for the payment of the redemption price of the Bonds called for redemption, and is hereby authorized and directed to apply such funds to the payment of the principal of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. In the event the Bonds called for redemption are not secured by a Credit Facility, then if on or prior to the date fixed for redemption, sufficient moneys shall be on deposit with the Trustee to pay the redemption price of any Bonds called for redemption, the Trustee is hereby authorized and directed to apply such funds to the payment of the principal of such Bonds or portions thereof called, together with accrued interest thereon to the redemption date and any required premium. Upon the giving of notice and the deposit of moneys for redemption at the required times on or prior to the date fixed for redemption, as

provided in this Article, interest on such Bonds or portions thereof thus called shall no longer accrue after the date fixed for redemption.

**Section 305. Cancellation.**

All Bonds which have been redeemed shall not be reissued but shall be canceled and disposed of by the Trustee in accordance with Section 214.

**Section 306. Partial Redemption of Bonds.**

(a) Upon surrender of any Bond for redemption in part only, the City shall execute and the Trustee shall authenticate and deliver to the Owner thereof a new Bond or Bonds of authorized denominations, in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

(b) During any Short Term Period or Commercial Paper Period, during which the authorized denominations are \$100,000 or multiples of \$5,000 in excess thereof, in the event a Bond is of a denomination larger than \$100,000, a portion of such Bond may be redeemed, but Bonds shall be redeemed only in an amount that causes the unredeemed portion to be in the principal amount of \$100,000 or any multiple of \$5,000 in excess thereof.

(c) During any Long Term Period, in case a Bond is of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any multiple thereof) may be redeemed, but Bonds shall be redeemed only in the principal amount of \$5,000 or any multiple thereof.

(d) Notwithstanding anything to the contrary contained in this Indenture, whenever the Bonds which are not held in a Book-Entry System are to be redeemed in part, such Bonds which are Pledged Bonds at the time of selection of Bonds for redemption shall be selected for redemption prior to the selection of any other Bonds. If the aggregate principal amount of Bonds to be redeemed exceeds the aggregate principal amount of Pledged Bonds at the time of selection, the Trustee may select for redemption Bonds in an aggregate principal amount equal to such excess by lot or in such other manner as the Trustee may determine.

**ARTICLE IV**

**MANDATORY PURCHASE DATE; DEMAND PURCHASE OPTION**

**Section 401. Mandatory Purchase of Bonds and Mandatory Purchase Price.**

(a) The Bonds of a Series shall be subject to mandatory tender by the Owners thereof for purchase on each Mandatory Purchase Date.

(b) Except when the Bonds of a Series are subject to mandatory tender on a day immediately following the end of a Calculation Period, the Trustee shall deliver or mail by first class mail a notice in substantially the form of Exhibit B attached hereto at least fifteen (15) days prior to the Mandatory Purchase Date to the Owners of the Bonds at the address shown on the registration books of the City as kept by the Trustee.

(c) When the Bonds of a Series are subject to mandatory tender on the day immediately following the end of a Calculation Period, the Trustee is not required to deliver or mail any notice to the Owners of such Bonds.

(d) Any notice given by the Trustee as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Owner, shall not affect the proceeding for purchase as to any Owner to whom proper notice is mailed.

(e) Owners of Bonds subject to mandatory tender shall be required to tender their Bonds to the Trustee for purchase at the Purchase Price, no later than 10:00 A.M. New York City time on the Mandatory Purchase Date, and any such Bonds not so tendered by such time on the Mandatory Purchase Date (“Untendered Bonds”) shall be deemed to have been purchased pursuant to this Section 401. In the event of a failure by an Owner of such Bonds to tender its Bonds on or prior to the Mandatory Purchase Date, said Owner shall not be entitled to any payment (including any interest to accrue subsequent to the Mandatory Purchase Date) other than the Purchase Price for such Untendered Bonds, and any Untendered Bonds shall no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the Purchase Price therefor.

(f) The Trustee shall provide the City with a copy of any notice delivered to the Owners of such Bonds pursuant to this Section 401.

#### **Section 402. Demand Purchase Option.**

Any Bond bearing interest at the Short Term Rate shall be purchased from the Owners thereof at the Purchase Price as provided in (a) or (b) below:

(a) While the Book-Entry System is not in effect:

(i) delivery to the Trustee at its Corporate Trust Office and to the Remarketing Agent at its principal office of a written notice (said notice to be irrevocable and effective upon receipt) which (1) states the aggregate principal amount and Bond numbers of the Bonds to be purchased; and (2) states the date on which such Bonds are to be purchased, which date shall be a Tender Date not prior to the seventh day next succeeding the date of delivery of such notice; and

(ii) delivery to the Trustee at its Corporate Trust Office at or prior to 10:00 A.M. New York City time on the date designated for purchase in the notice described in (i) above of such Bonds to be purchased, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank.

(b) While the Book-Entry System is in effect, the ownership interest of any Beneficial Owner of a Bond or portion thereof in an authorized denomination shall be purchased at the Purchase Price if such Beneficial Owner causes the Participant through whom such Beneficial Owner holds such Bonds to (i) deliver to the Trustee at its Corporate Trust Office and to the Remarketing Agent at its principal office a notice which (1) states the aggregate amount of the

beneficial ownership interest to be purchased, and (2) states the date on which such beneficial interest is to be purchased, which date shall be a Tender Date not prior to the seventh day next succeeding the date of delivery of such notice; and (ii) on the same date as delivery of the notice referred to in (i) above, deliver a notice to the Securities Depository irrevocably instructing it to transfer on the registration books of the Securities Depository the beneficial ownership interests in such Bond or portion thereof to the account of the Trustee, for settlement on the purchase date on a “delivery versus payment” basis with a copy of such notice delivered to the Trustee on the same date.

A Series of Bonds is subject to tender at the option of the Majority Holder upon an event of default under the Continuing Covenants Agreement. Notice of such optional tender shall be given as set forth above.

#### **Section 403. Funds for Purchase of Bonds.**

On the date Bonds of a Series are to be purchased pursuant to Sections 401 or 402, such Bonds shall be purchased at the Purchase Price only from the funds listed below. Subject to the provisions of Section 612(c), funds for the payment of the Purchase Price shall be derived from the following sources in the order of priority indicated:

(a) the proceeds of the sale of such Bonds which have been remarketed by the Remarketing Agent and which proceeds are on deposit with the Trustee prior to 12:00 noon New York City time on the Business Day preceding the date such Bonds are to be purchased but, during any Credit Facility Period, only if such Bonds were purchased by an entity other than the City or any affiliate of the foregoing;

(b) moneys drawn by the Trustee under the Credit Facility, during any Credit Facility Period, pursuant to Section 612; and

(c) any other moneys furnished to the Trustee and available for such purpose.

#### **Section 404. Delivery of Purchased Bonds.**

(a) Bonds purchased with moneys described in Section 403(a) shall be delivered by the Trustee, at its Corporate Trust Office, to or upon the order of the purchasers thereof and beneficial interests so purchased shall be registered on the books of the Securities Depository in the name of the Participant through whom the new Beneficial Owner has purchased such beneficial interest; provided, however, that during any Credit Facility Period, the Trustee shall not deliver any Bonds and there shall not be registered any beneficial ownership as with respect to Bonds as described in this paragraph with respect to Bonds which were Pledged Bonds until the Credit Provider has confirmed in writing that the Credit Facility has been reinstated in full.

(b) Bonds purchased with moneys described in Section 403(b) shall be delivered by the Trustee to or upon the written order of the Credit Provider and shall, if requested by the Credit Provider, be marked with a legend indicating that they are Pledged Bonds.

(c) Bonds purchased with moneys described in Section 403(c) shall, at the written direction of the City, (i) be delivered as instructed by the City, or (ii) be delivered to the Trustee for cancellation; provided, however, that any Bonds so purchased after the selection thereof by the Trustee for redemption shall be delivered to the Trustee for cancellation.

(d) While the Book-Entry System is in effect with respect to the Bonds, delivery of Bonds for purchase shall be deemed to have occurred upon transfer of ownership interests therein to the account of the Trustee on the books of the Securities Depository.

(e) While the Book-Entry System is in effect, payment of the Purchase Price of beneficial ownership interests tendered pursuant to Section 402(b) shall be made by payment to the Participant from whom the notice of tender is received from the sources provided herein for the purchase of Bonds. The Trustee shall hold beneficial ownership interests of Bonds delivered to it pursuant to Section 402(b) pending settlement in trust for the benefit of the Participant from whom the beneficial interests in the Bonds are received.

Except as provided above, Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

#### **Section 405. Delivery of Proceeds of Sale of Purchased Bonds.**

Except in the case of the sale of any Pledged Bonds, the proceeds of the sale of any Bonds delivered to the Trustee pursuant to Section 401 or 402, to the extent not required to pay the Purchase Price thereof in accordance with Section 403, shall be paid to or upon the order of the Credit Provider, to the extent required to satisfy the obligations of the City under the Credit Agreement, and the balance, if any, shall be paid to or upon the order of the City; provided, however, in the case of Pledged Bonds that are subsequently remarketed prior to an Interest Payment Date, the accrued interest paid by such new purchaser shall be deposited into the Remarketing Account of the Bond Fund and used to pay interest on the next Interest Payment Date.

#### **Section 406. Duties of Trustee with Respect to Purchase of Bonds.**

(a) The Trustee shall hold all Bonds delivered to it pursuant to Section 401 or 402 in trust for the benefit of the respective Owners of Bonds which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners of Bonds;

(b) The Trustee shall hold all moneys delivered to it pursuant to this Indenture for the purchase of Bonds in a separate account, in trust for the benefit of the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity, and after such delivery, in trust for the benefit of the person or entity who have not tendered or received payment for their Bonds;

(c) The Trustee shall deliver to the City, the Remarketing Agent and, during any Credit Facility Period, the Credit Provider, a copy of each notice delivered to it in accordance with Section 402 and, immediately upon the delivery to it of Bonds in accordance with said

Section 402, give telephonic or telegraphic notice to the City, the Remarketing Agent and the Credit Provider, during any Credit Facility Period, specifying the principal amount of the Bonds so delivered; and

(d) During any Credit Facility Period, the Trustee shall draw moneys under the Credit Facility as provided in Section 612 to the extent required to provide for timely payment of the Purchase Price of Bonds in accordance with the provisions of Section 403.

**Section 407. Remarketing of Bonds.**

The Remarketing Agent shall remarket, in accordance with the terms of the Remarketing Agreement, Bonds or beneficial interests tendered pursuant to the terms of Sections 401 and 402 at a price equal to the principal amount thereof plus accrued interest thereon from the last previous Interest Payment Date upon which interest has been paid to the date of such remarketing. The Trustee shall not authenticate and release Bonds or beneficial interests in Bonds prior to 10:30 A.M. New York City time on the date of any remarketing.

**ARTICLE V**

**GENERAL COVENANTS**

**Section 501. Payment of Principal, Premium, if any, and Interest.**

(a) The City covenants that it will promptly pay or cause to be paid the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates, and in the manner provided herein and in said Bonds according to the true intent and meaning thereof, but solely from the amounts pledged therefor which are from time to time held by the Trustee in the various accounts of the Bond Fund. The principal of, premium, if any, and interest on the Bonds are payable from Revenues which are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the City; provided, however, that such obligations are not general obligations of the City but are limited obligations of the City secured solely by and payable solely from the Revenues, except to the extent payable from the proceeds of the Bonds, the income, if any, derived from the investment thereof, income from investments pursuant to this Indenture, or other funds or property pledged under this Indenture. Neither the faith and credit nor the taxing power of the State of Georgia or any political subdivision thereof, including the City and Fulton County, is pledged as security for the payment of the principal of or premium, if any, or interest on the Bonds.

(b) Pursuant to the granting clauses of this Indenture, the City pledges the Revenues for payment for the Bonds under the Act and such Revenues, as and when received by the Trustee for the account of the City, shall immediately be subject to the lien and security interest of this Indenture without any requirement of delivery thereof to the Trustee or any other act. Such lien and security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City without regard to whether such parties have notice thereof. The Revenues shall not be pledged, in whole or in part, as security for any obligations of

the City other than the Bonds and Subordinate Debt. Revenues derived from a Credit Facility shall be pledged only to the Series of Bonds for which such Credit Facility was issued.

**Section 502. Performance of Covenants.**

The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture and in the Credit Agreement, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The City covenants that it is duly authorized under the Constitution and laws of the State of Georgia, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture and Credit Agreement, and that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the City according to the terms thereof and hereof.

**Section 503. Instruments of Further Assurance.**

The City will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The City, except as herein and in the Credit Agreement provided, will not sell, convey, mortgage, encumber or otherwise dispose of any part of the amounts, revenues and receipts payable under the Credit Agreement or its rights under the Credit Agreement.

**Section 504. List of Owners of Bonds.**

The Trustee will keep on file a list of names and addresses of the Owners of all Bonds as from time to time registered on the registration books maintained by the Trustee, together with the principal amount and numbers of such Bonds owned by each such Owner. At reasonable times upon reasonable prior written notice and under reasonable regulations established by the Trustee, said list may be inspected and copied for any purpose by the City or by the Owners (or a designated representative thereof) of fifteen percent (15%) or more in aggregate principal amount of Outstanding Bonds, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 505. Reserved.**

**Section 506. Tax Covenant.**

The City shall not knowingly engage in any activities, or take or omit to take any action, that to its knowledge will result in (a) any Bond becoming an “arbitrage bond” within the meaning of Section 103(b)(2) and Section 148 of the Code and the regulations and rulings thereunder then applicable to such Bond, or (b) interest on any Bond otherwise becoming includable in gross income of the recipients thereof under the federal income tax laws. The City shall, at the City’s

expense, take all lawful action required of it to ensure that the interest on the Bonds is not included in gross income for federal income tax purposes and not included in alternative minimum taxable income of individuals.

**Section 507. Undertaking To Provide Ongoing Disclosure.**

If the Conversion Option to elect a Long Term Period is elected, the City has undertaken to provide ongoing disclosure for the benefit of the Bondholders pursuant to Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR Part 240 § 240.15C2-12), which undertaking is hereby assigned by the City to the Trustee for the benefit of the Owners. Such assignment is a present absolute assignment and not the assignment of a security interest.

**Section 508. Reports by Trustee.**

(a) The Trustee shall make annual reports to the City of all moneys received and expended by it.

(b) The Trustee shall notify the City in writing of the payment in full of the principal of, premium, if any, and interest on any Bonds. Failure of the Trustee to provide any such notice shall not have any effect on the occurrence of such payment.

**Section 509. Preservation of Revenues; Amendment of Documents.**

The City shall not take any action to interfere with or impair the pledge and assignment hereunder of the Revenues or the Trustee's enforcement of any rights hereunder, without the prior written consent of the Trustee. The Trustee may give such written consent, and may itself take any action or consent to amendment or modification to a Credit Agreement or to any other document, instrument or agreement relating to the security for the Bonds to which it is a party or a beneficiary, only if (i)(A) in the opinion of the Trustee, which may be in reliance on an Opinion of Counsel, such action or such amendments or modifications will not materially adversely affect the interest of the Owners of the Bonds or result in any impairment of the security hereby given for the payment of the Bonds, or (B) the Trustee first obtains the written consent of the Owners of a majority in principal amount of the Outstanding Bonds; and (ii) such amendments or modifications will not have the effect of extending the time for payment or reducing the amount due and payable by any Credit Provider under any Credit Agreement.

**Section 510. Subordinate Debt.**

The City may issue Subordinate Debt, although no such Subordinate Debt may be accelerated unless no Bonds are Outstanding or unless the Credit Provider consents to any such acceleration. In connection with the issuance of Subordinate Debt, the City may provide for the creation of additional accounts and subaccounts within any fund or account established by this Indenture.

The City may at any time issue Subordinate Debt (a) to finance or refinance Redevelopment Costs of the Westside TAD, (b) to refund all or a portion of any Series of Bonds

or Subordinate Debt and (c) for a combination of such purposes. Subordinate Debt shall be issued pursuant to a Supplemental Indenture and shall be secured by Subordinate Pledged Revenues. Prior to the authentication and delivery by the Trustee of Subordinate Debt, the requirements of Section 211(a) through (j) of this Indenture shall be satisfied (except that references to Additional Bonds in Section 211(a) through (j) shall instead be references to Subordinate Debt). Prior to the issuance of Subordinate Debt, the City shall obtain written confirmation from the rating agencies then providing a rating for any Subordinate Debt then outstanding that the issuance of the Subordinate Debt will not result in the ratings on the Subordinate Debt then outstanding to be reduced or withdrawn as a result of such issuance. The Trustee shall apply the net proceeds of the Subordinate Debt in accordance with the terms of the Supplemental Indenture.

**Section 511. Accession of Subordinate Debt.**

Any Subordinate Debt may accede to the status of complete parity with the Bonds, if, as of the date of accession, (a) the School Board has adopted a resolution authorizing the pledge of its positive tax allocation increments pursuant to the Act, (b) the City and the School Board execute an intergovernmental contract with respect to such positive tax allocation increments, (c) the City receives an opinion of counsel to the effect that (i) the pledge of such positive tax allocation increments is authorized by the laws and Constitution of the State of Georgia, (ii) the intergovernmental agreement is enforceable against the School Board in accordance with its terms (subject to any bankruptcy, insolvency or laws affecting creditors' rights or remedies) and (iii) the pledge of such positive ad valorem tax increments will not adversely affect the exemption from federal or state income taxation on any Bonds or Subordinate Debt then outstanding the interest on which is intended to be exempt from taxation and (d) the conditions set forth in Section 211 (e), (f), (g) and (i) of hereof have been met.

**Section 512. Pledge of Series 2005B Bond Additional Security.**

The City hereby pledges the Series 2005B Bond Additional Security as Additional Security for the payment of the Series 2005B Bonds and such Series 2005B Bond Additional Security, as and when received by the City, shall immediately be subject to the lien and security interest of this Indenture without any requirement of delivery thereof to the Trustee or any other act. Subject to Section 512 hereof, such lien and security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City without regard to whether such parties have notice thereof. Subject to Section 512 hereof, the Series 2005B Bond Additional Security shall not be pledged, in whole or in part, as security for any other obligations of the City other than the Series 2005B Bonds.

Notwithstanding anything herein to the contrary, so long as a Credit Facility is in full force and effect with respect to the Series 2005B Bonds and no default by the Credit Provider shall have occurred thereunder, the pledge of the Series 2005B Bond Additional Security shall be subordinate to the pledge of such Series 2005B Bond Additional Security by the City to the Credit Provider. [to be discussed]

## **ARTICLE VI**

### **REVENUES AND FUNDS**

#### **Section 601. Creation of the Bond Fund.**

There is hereby created and established with the Trustee a trust fund to be designated “City of Atlanta, Georgia - Bond Fund, Westside Project,” which shall be used to pay when due the principal and Purchase Price of, premium, if any, and interest on the Bonds. Within the Bond Fund there is hereby created and established certain trust accounts, to be designated the “General Account”, the “Credit Facility Account”, and the “Remarketing Account” and a separate subaccount in each such Account with respect to each Series of Bonds issued hereunder. Moneys drawn under the Credit Facility (if any) shall be deposited in the Credit Facility Account and shall be held separate and apart from moneys derived from any other source. Moneys received from the Remarketing Agent shall be deposited in the Remarketing Account and shall be held separate and apart from moneys derived from any other source. Unless otherwise specified, all moneys received by the Trustee for deposit into the Bond Fund shall be credited to the General Account. Any reference herein to the “Bond Fund” without further qualification or explanation shall, unless the context indicates otherwise, constitute a reference to the General Account. The Bond Fund is to be held in the name of the Trustee for the exclusive benefit of the Bondholders. The Remarketing Account and the Credit Facility Account are each an Eligible Account.

#### **Section 602. Payments into the Bond Fund.**

There shall be deposited into the Bond Fund from time to time the following:

- (a) in the Credit Facility Account, moneys drawn under the Credit Facility (during any Credit Facility Period);
- (b) in the Remarketing Account, moneys received by the Trustee from the proceeds of the remarketing of the Bonds; and
- (c) in the General Account, all other moneys received by the Trustee under and pursuant to any of the provisions hereof which are required to be or which are accompanied by directions that such moneys are to be paid into the Bond Fund.

#### **Section 603. Use of Moneys in the Bond Fund.**

Except as provided in Sections 403, 405, 406 and 611, moneys in the various accounts of the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds and for the redemption of the Bonds prior to maturity. Subject to the provisions of Section 612, funds for such payments of the principal of and premium, if any, and interest on a Series of Bonds shall be derived from the following sources in the order of priority indicated:

- (a) moneys drawn by the Trustee under the Credit Facility issued in respect of such Series of Bonds during any Credit Facility Period;

(b) moneys deposited into the Remarketing Account of the Bond Fund pursuant to Section 405, representing the accrued interest paid by the purchaser of Pledged Bonds; and

(c) any other moneys furnished to the Trustee and available for such purpose.

**Section 604. Payment of Bonds with Proceeds of Refunding Bonds.**

The principal of and interest on Bonds of a Series may be paid from the proceeds of the sale of refunding obligations if, in the opinion of nationally recognized counsel experienced in bankruptcy matters, which opinion shall be satisfactory to the rating agency (if any) then providing the rating borne by such Bonds, the application of such refunding proceeds will not constitute a voidable preference in the event of the occurrence of an Act of Bankruptcy.

**Section 605. Project Fund.**

There is hereby created and established with the Trustee a trust fund to be designated “City of Atlanta, Georgia - Project Fund, Westside Project.” There shall be established within the Project Fund a separate account with respect to each Series of Bonds issued hereunder. [The Trustee has previously established separate accounts in the Project Fund for a portion of the proceeds of each of the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds; however, all of such proceeds have since been spent on the Cost of each respective Series Project, and such accounts have since been closed.] [all proceeds spent?]

**Section 606. Payments into the Project Fund; Disbursements.**

The proceeds received from the sale of each Series of Additional Bonds shall be deposited into a separate account within the Project Fund as provided in Section 211 and shall not be commingled with any other funds.

The Trustee shall use all money in each Series Account of the Project Fund solely to pay the Cost of the Project, as evidenced by requisitions and certificates as hereinafter provided. Before any payment shall be made from any Series Account to pay the Cost of the Series Project, there shall be filed with the Trustee a requisition in the form attached as Exhibit C to this Indenture. Upon receipt of each such requisition, the Trustee shall make payment from the specified Series Project Account in accordance with such requisition. Before any payment shall be made to the Credit Provider or the Remarketing Agent, as the case may be, during such period, the Credit Provider or the Remarketing Agent shall file with the Trustee a certification in a form to be mutually agreed between the Trustee and the Credit Provider or the Remarketing Agent, as applicable, setting forth the amounts for which the Credit Provider or the Remarketing Agent are seeking payment.

**Section 607. Use of Money in the Project Fund Upon Default.**

If the principal of a Series of Bonds shall have become due and payable pursuant to Article IX, any balance remaining in the related Series Account shall without further authorization be transferred into the appropriate subaccount within the General Account of the Bond Fund.

**Section 608. Disposition of Balance in Project Fund.**

If a Series Project has been completed and the Trustee has received a certificate of the City stating the date of completion of the Series Project and what items of the Cost of the Series Project, if any, have not been paid and for the payment of which moneys should be reserved in the applicable account within the Project Fund, the City shall direct the Trustee to deposit the balance of any moneys remaining in the related Series account in excess of the amount to be reserved for payment of unpaid items of the Cost of the Project in the Bond Fund. Any such amounts shall be invested at a yield not in excess of the yield on the related Series of Bonds and used to redeem the related Series of Bonds at the earliest practicable date or, if an opinion of Bond Counsel is delivered to the Trustee to the effect no adverse impact on the tax status of interest on the Bonds will result, for any other use permitted by law.

**Section 609. Nonpresentment of Bonds.**

If any Bond is not presented for payment when the principal thereof becomes due (whether at maturity, upon acceleration or call for redemption or otherwise), all liability of the City to the holder thereof for the payment of such Bond shall be completely discharged if moneys sufficient to pay such Bond and the interest due thereon shall be held by the Trustee for the benefit of such holder, and thereupon it shall be the duty of the Trustee to hold such moneys for a period of one year, without liability for interest thereon, for the benefit of such holder, who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Any such moneys which shall be so held and which shall remain unclaimed by the holders of such Bonds for a period of one year after the date on which such Bonds shall have become payable shall be paid to the City and shall be held by the City in a separate account for four years and thereafter in a general account of the City. After such moneys have been paid to the City, the holders of such Bonds shall be entitled to look only to the City, and all liability of the Trustee with respect to such amounts shall cease.

**Section 610. Moneys to be Held in Trust.**

All moneys required to be deposited with or paid to the Trustee for the account of any fund or account referred to in any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and security interest created hereby, except as otherwise specifically provided herein.

**Section 611. Repayment to the Credit Provider and the City from the Bond Fund and the Project Fund.**

Any amounts remaining in any account of the Bond Fund, the Project Fund, or any other fund or account created hereunder after payment in full of the principal of, premium, if any, and interest on the Bonds of the respective Series, the fees, charges and expenses of the Trustee and all other amounts required to be paid hereunder, shall be paid immediately to the respective Credit Provider to the extent of any indebtedness of the City to the Credit Provider under the Credit Agreement, and, after repayment of all such indebtedness, to the City. In making any payment to the Credit Provider under this Section, the Trustee may rely conclusively upon a written statement

provided by the Credit Provider as to the amount payable to the Credit Provider under the Credit Agreement.

## **Section 612. Credit Facility.**

(a) If a particular Series of Bonds is initially issued in a Credit Facility Period, the City shall continue to provide a Credit Facility for payment of the Purchase Price of such Bonds during any period in which such Bonds bear interest at a Short-Term Rate or a Commercial Rate or during any Long-Term Period of three years or less if and as necessary to receive from each rating agency then rating such Bonds written confirmation that the existing short-term rating on such Bonds will not be down-graded or withdrawn. Initially, each Credit Facility for Bonds of a Series that bear interest at a Short Term Rate for a Weekly Period shall provide for draws in an amount at least equal to the aggregate principal amount of all Bonds of such Series then Outstanding plus 45 days' interest thereon calculated at the Maximum Rate. The number of days' interest shall be adjusted in accordance with a Short Term Adjustment Date or a Conversion Date as necessary to receive from each rating agency then rating the particular Series written confirmation that the existing rating on such Bonds will not be downgraded or withdrawn as a result of such Short Term Adjustment Date or Conversion Date.

(b) During any Credit Facility Period, the Trustee shall timely draw moneys under the respective Credit Facility in accordance with the terms thereof (i) to pay when due (whether by reason of maturity, the occurrence of an Interest Payment Date, redemption, acceleration or otherwise) the principal of, premium, if any, and interest on a Series of Bonds, and (ii) to the extent moneys described in Section 403(a) are not available therefor prior to 12:00 noon New York City time on the Business Day preceding the date such Bonds are to be purchased, to pay when due the Purchase Price of Bonds. Without limiting the generality of the foregoing, if the time between Interest Payment Dates is greater than one month for an Interest Period of a Series of Bonds, the Trustee is hereby instructed to draw upon the respective Credit Facility on the first day of each calendar month during such Interest Period, in arrears for the preceding calendar month, commencing with the first day of the second calendar month of such Interest Period (or on the Business Day preceding the first day of each such calendar month, in the event such day is not a Business Day), an amount equal to the interest on such Bonds that has accrued or will accrue during the calendar month for which the drawing is being submitted. Upon the final drawing of the Interest Period, and the application of all amounts drawn during such Interest Period to the payment on the applicable Interest Payment Date of interest that has accrued on such Bonds during such Interest Period, the investment earnings (if any) on any previous amounts drawn under such Credit Facility, which investments earnings are on deposit in the Credit Facility Account of the Bond Fund, shall be paid by the Trustee to the City.

(c) In the event of a drawing under a Credit Facility to pay the Purchase Price of Bonds upon a Mandatory Purchase Date relating to the issuance and delivery of a Substitute Credit Facility, the Trustee shall draw moneys under the Credit Facility in effect on and prior to such Mandatory Purchase Date and shall not draw upon the Substitute Credit Facility that will become effective on or after such Mandatory Purchase Date.

(d) Notwithstanding any provision to the contrary which may be contained in this Indenture, including, without limitation, Section 612(a), (i) in computing the amount to be drawn

under the Credit Facility on account of the payment of the principal or Purchase Price of, or premium, if any, or interest on the Bonds, the Trustee shall exclude any such amounts in respect of any Bonds which a Responsible Officer knows are Pledged Bonds or Bonds owned by the City on the date such payment is due, and (ii) amounts drawn by the Trustee under the Credit Facility shall not be applied to the payment of principal or Purchase Price of, or premium, if any, or interest on, any Bonds which a Responsible Officer knows are Pledged Bonds or Bonds owned by the City on the date such payment is due.

**Section 613. Substitute Credit Facility.**

(a) The requirements for the provision of a Substitute Credit Facility with respect to any Bonds of a Series shall include the following items: (i) an opinion of Bond Counsel stating that the delivery of the proposed Substitute Credit Facility to the Trustee is permitted under this Indenture and complies with its terms and will not adversely affect the exclusion of the interest payable on such Bonds if the interest on such Bonds when issued was excludable from the gross income for federal income tax purposes (ii) an opinion of Independent Counsel to the effect that the exemption of such Bonds from the registration requirements of the Securities Act of 1933, as amended, and the exemption of this Indenture from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of the delivery of the proposed Substitute Credit Facility, and that the Substitute Credit Facility is exempt from the registration requirements of the Securities Act of 1933, as amended, (iii) an opinion of Independent Counsel to the effect that the Substitute Credit Facility has been duly authorized, executed and delivered by the Credit Provider issuing the Substitute Credit Facility and constitutes a valid and legally binding obligation of the Credit Provider issuing the Credit Facility, (iv) the written consent of the Remarketing Agent to the delivery of the Substitute Credit Facility, which consent shall not be unreasonably withheld and (v) written evidence satisfactory to the Trustee that such Bonds, at the effective date of the Substitute Credit Facility, have been assigned a short-term rating at least equal to the short-term rating or ratings which had been assigned to the Bonds at the date of their issuance.

(b) Subject to the conditions set forth in this Section, if at any time there shall have been delivered to the Trustee (i) a Substitute Credit Facility to replace the Credit Facility then in effect and (ii) each of the items described in (a) above as requirements for the provision of an Substitute Credit Facility, then the Trustee shall accept such proposed Substitute Credit Facility, and promptly, following the Mandatory Purchase Date resulting from the delivery of the Substitute Credit Facility, surrender the Credit Facility then in effect to the Credit Provider which issued such Credit Facility for cancellation in accordance with its terms. No such Credit Facility shall be surrendered or cancelled, however, until all draws thereunder, if any, have been honored by the Credit Provider.

(c) The City shall furnish written notice to the Trustee and the Remarketing Agent, not less than twenty (20) days prior to the Mandatory Purchase Date, (i) notifying the Trustee and the Remarketing Agent that the City is exercising its option to provide for the delivery of a Substitute Credit Facility to the Trustee, (ii) setting forth the Mandatory Purchase Date in connection with the delivery of such Substitute Credit Facility, which shall in any event be an Interest Payment Date that is not less than two Business Days prior to the Credit Facility Termination Date of the Credit Facility then in effect with respect to the Bonds, and

(iii) instructing the Trustee to furnish notice to the Bondholders regarding the Mandatory Purchase Date at least fifteen (15) days prior to the Mandatory Purchase Date, as more fully described in Section 401(b) of this Indenture and Exhibit B hereto. Any Substitute Credit Facility shall be delivered to the Trustee prior to such Mandatory Purchase Date, shall be effective on and after such Mandatory Purchase Date, and shall expire on a date which is fifteen (15) days after an Interest Payment Date for the Bonds.

## ARTICLE VII

### INVESTMENT OF MONEYS

#### **Section 701. Investment of Moneys.**

The Trustee shall separately invest and reinvest the moneys held in the Bond Fund and, the Project Fund, and the accounts therein for the benefit of the City and at its direction. In the absence of any direction from the City, the Trustee shall invest and reinvest such moneys in accordance with standing instructions from the City. In directing the investment of funds in accordance with this paragraph, the City may choose obligations or securities which are permitted for the investment of public funds under Section 36-82-7 of the Official Code of Georgia Annotated, as amended, or any successor provisions of law applicable to such investments. In the absence of any direction from the City, the Trustee shall invest and reinvest such moneys in accordance with standing instructions from the City.

Any such investments shall be held by or under the control of the Trustee and while so held shall be deemed a part of the fund or account in which such moneys were originally held, and, except as otherwise set forth in this Indenture, the interest accruing thereon and any profit realized from such investments shall be credited to such fund or account and any loss resulting from such investments shall be charged to such fund or account. The Trustee shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund is insufficient for the purposes thereof.

Investment of moneys held in the funds created by this Indenture shall be subject to the following limitations which shall be observed by the City in making such investments for the accounts held by it or in directing such investments (and such direction may be relied on by the Trustee for such purposes) for the funds and accounts held by the Trustee:

(a) for the Project Fund, investment in securities and obligations maturing in phases not later than the dates on which such moneys are expected to be needed for payment of the Cost of the Project; and

(b) for the General Account of the Bond Fund, investment in securities and obligations maturing not later than the dates on which such moneys will be needed to pay principal or Purchase Price of and interest on the Bonds; and,

(c) for the Credit Facility Account and Remarketing Account of the Bond Fund, investments in Government Obligations (excluding those Government Obligations described in clause (c) of the definition of Government Obligations) or money market funds rated in the

highest category by any nationally recognized rating agency then maintaining a rating on the Bonds at the request of the City maturing not later than the earlier of (i) 30 days, or (ii) the dates on which such moneys will be needed to pay principal, or Purchase Price of, and interest on the Bonds.

For the purpose of determining compliance with the previous paragraph, repurchase agreements or guaranteed investment contracts shall be deemed to have a maturity equal to the next permitted draw date thereon.

## **ARTICLE VIII**

### **DISCHARGE OF INDENTURE**

#### **Section 801. Discharge of Indenture.**

If the City shall pay or cause to be paid, in accordance with the provisions of this Indenture, to the Owners of the Bonds, the principal of, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the City shall not then be in default in any of the other covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part and if the City shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the City such instruments in writing as shall be requisite to release the lien hereof and reconvey, release, assign and deliver unto the City any and all of the estate, right, title and interest in and to any and all rights or property conveyed, assigned or pledged to the Trustee or otherwise subject to the lien of this Indenture, except (i) amounts in any account of the Bond Fund or Project Fund required to be paid to the Credit Provider or the City under Section 405 or 611, and (ii) cash held by the Trustee for the payment of the principal or Purchase Price of, premium, if any, or interest on particular Bonds.

#### **Section 802. Defeasance of Bonds.**

The following provisions of this Section 802 shall apply only during a Long Term Period.

Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Obligations maturing as to principal and interest in such amounts and at such times as will insure, without further investment or reinvestment thereof, in the opinion of an independent certified public accounting firm of national reputation (a copy of which opinion shall be furnished to the rating agency then providing the rating borne by the Bonds), the availability of sufficient moneys to make such payment, (b) all fees, compensation and reasonable expenses of the Trustee and the City pertaining to the Bonds

with respect to which such deposit is made, shall have been paid or the payment thereof provided for to the satisfaction of the Trustee, and (c) during any Credit Facility Period, the City shall have given to the Trustee in form satisfactory to the Trustee an opinion of counsel experienced in bankruptcy matters, which opinion shall be satisfactory to the rating agency (if any) then providing the rating borne by the Series of Bonds, to the effect that the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Act of Bankruptcy. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Article III of this Indenture, or in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the City shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by (a)(ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section 802 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

Before accepting or using any moneys to be deposited pursuant to this Section 802, the City shall furnish the Trustee with (i) an opinion of Bond Counsel to the effect that such deposit will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds and that all conditions hereunder have been satisfied, and (ii) a certificate of an independent certified public accountant or the Remarketing Agent to the effect that a deposit will be sufficient to defease the Bonds as provided in this Section 802. The Trustee shall be fully protected in relying upon such Bond Counsel opinion and/or accountant's certificate in accepting or using any moneys deposited pursuant to this Article VIII.

All moneys so deposited with the Trustee as provided in this Section 802 may also be invested and reinvested, at the written direction of the City, in noncallable Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this Section 802 which is not required for the payment of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the General Account of the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the General Account of the Bond Fund; provided, however, unless the opinion of Bond Counsel specifically permits any such reinvestment, the City shall furnish to the Trustee an opinion of Bond Counsel to the effect that such reinvestment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

The City hereby covenants that no deposit will knowingly be made or accepted and no use knowingly made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

Notwithstanding any provision of any other article of this Indenture which may be contrary to the provisions of this Section 802, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 802 for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the interest and premium thereon, if any) with respect to which such moneys or Government Obligations have been so set aside in trust.

## **ARTICLE IX**

### **DEFAULTS AND REMEDIES**

#### **Section 901. Defaults.**

If any of the following events occur, it is hereby declared to constitute a “Default”:

- (a) Default in the due and punctual payment of interest on any Bond;
- (b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;
- (c) Default in the due and punctual payment of the Purchase Price of any Bond at the time required by Section 401 or 402;
- (d) At any time during the Credit Facility Period, (1) receipt by the Trustee, within ten (10) calendar days following a drawing under the Credit Facility to pay interest or the portion of the Purchase Price corresponding to interest on the Bonds, of written notice from the Credit Provider that the Credit Facility will not be reinstated (in respect of interest) to an amount equal to at least 45 days’ interest at the Maximum Rate on all Outstanding Bonds due to a failure of the City to reimburse the Credit Provider for such drawing, or (2) receipt by the Trustee of written notice from the Credit Provider that any other payment default under Section 8.01 of the Credit Agreement has occurred;
- (e) At any time other than a Credit Facility Period, default in the performance or observance of any other of the covenants, agreements or conditions on the part of the City in this Indenture or in the Bonds contained and failure to remedy the same after notice thereof pursuant to Section 912.
- (f) During an Interest Period in which a Continuing Covenants Agreement is in effect, the Trustee shall have received a written notice from the Majority Holder of the occurrence and continuance of any payment default under such Continuing Covenants Agreement.

#### **Section 902. Acceleration.**

Upon the occurrence of (i) any Default known to a Responsible Officer of the Trustee under Section 901(a), (b), (c), or (e), the Trustee may, (x) at the written request of the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder) or (y) at the written request of the Owners of not less than fifty

percent (50%) in aggregate principal amount of Outstanding Bonds with the written consent of the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder) shall, or (ii) any Default under subsection (d) or (f) of Section 901, the Trustee shall, by notice in writing delivered to the City (or, if the Book-Entry System is in effect, the Securities Depository), declare the principal of all Bonds and the interest accrued thereon to the date of such acceleration immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee during the Credit Facility Period, shall draw moneys under the Credit Facility to pay the principal of all Outstanding Bonds and the accrued interest thereon to the date of acceleration to the extent required by Section 612. Interest shall cease to accrue on the Bonds on the date of declaration of acceleration under this Section 902.

### **Section 903. Other Remedies; Rights of Owners of Bonds.**

Subject to the provisions of Sections 902 and 913 upon the occurrence of a Default, the Trustee may pursue any available remedy at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds.

Subject to the provisions of Sections 902 and 913, if a Default shall have occurred and be continuing and if requested so to do by the Owners of not less than fifty percent (50%) in aggregate principal amount of Outstanding Bonds and provided the Trustee is indemnified as provided in Section 1001(I), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section and by Section 902, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owners of Bonds.

Subject to the provisions of Sections 902 and 913, no remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Owners of Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners of Bonds hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

No waiver of any Default hereunder, whether by the Trustee or by the Owners of Bonds, shall extend to or shall affect any subsequent Default or shall impair any rights or remedies consequent thereon.

No Default or Event of Default affecting a Series of Bonds subject to a Continuing Covenants Agreement or relating to the rights and obligations of a Majority Holder under a Continuing Covenants Agreement with respect thereto may be waived during the related Interest Period without the prior written consent of the Majority Holder.

**Section 904. Right of Owners of Bonds To Direct Proceedings.**

Subject to the provisions of Sections 902, 913 and 1001(e), anything in this Indenture to the contrary notwithstanding, the Owners of at least a majority in aggregate principal amount of the Outstanding Bonds shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 905. Appointment of Receivers.**

Upon the occurrence of a Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners of Bonds under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 906. Waiver.**

Upon the occurrence of a Default, to the extent that such rights may then lawfully be waived, neither the City nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws of any jurisdiction now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, and the City, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws.

**Section 907. Application of Moneys.**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article (other than moneys drawn under the Credit Facility, which shall be deposited directly into the Credit Facility Account of the Bond Fund, proceeds of any remarketing of Bonds, which shall be deposited directly into the Remarketing Account of the Bond Fund, or moneys deposited with the Trustee and held in accordance with Section 609) shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances owing to or incurred or made by the Trustee, be deposited in the General Account of the Bond Fund and the moneys in each account of the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest (with interest on overdue installments of such interest, to the extent permitted by law, at the rate of interest borne by the Bonds) and, if the amount available shall not be

sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

SECOND - To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), (with interest on overdue installments of principal and premium, if any, to the extent permitted by law, at the rate of interest borne by the Bonds) and, if the amount available shall not be sufficient to pay in full all Bonds due on any particular date, then to the payment ratably according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD - To the payment to the persons entitled thereto as the same shall become due of the principal of and premium, if any, and interest on the Bonds which may thereafter become due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest and premium, if any, then due and owing thereon, payment shall be made ratably according to the amount of interest, principal and premium, if any, due on such date to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due, respectively, for principal and interest, to the persons entitled thereto without any discrimination or privilege, with interest on overdue installments of interest or principal, to the extent permitted by law, at the rate of interest borne by the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of Section 907(b), in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of Section 907(a).

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, that upon an acceleration of Bonds pursuant to Section 902, interest shall cease to accrue on the Bonds on and after the date of such acceleration. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and

shall not be required to make payment to the Owner of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever the principal of, premium, if any, and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in any account of the Bond Fund shall be paid to the City or the Credit Provider as provided in Section 611.

Notwithstanding anything to the contrary herein or otherwise, moneys drawn under the Credit Facility shall be applied only to the payment of principal or Purchase Price of and accrued interest on the Bonds.

#### **Section 908. Remedies Vested in Trustee.**

All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Owners of the Outstanding Bonds.

#### **Section 909. Rights and Remedies of Owners of Bonds.**

No Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (subject to the provisions of Section 902) (i) a Default has occurred of which the Trustee has been notified as provided in Section 1001(h), or of which by said subsection it is deemed to have notice, (ii) the Owners of not less than fifty percent (50%) in aggregate principal amount of Outstanding Bonds shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding and shall have offered to the Trustee indemnity as provided in Section 1001(1), and (iii) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Owners of all Outstanding Bonds. However, nothing contained in this Indenture shall affect or impair the right of any Owner of Bonds to enforce the payment of the principal or Purchase Price of, premium, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the City to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner in the Bonds expressed. No Owner of any Bond shall have any right to

institute any suit, action or proceeding at equity or at law to enforce a drawing under the Credit Facility.

#### **Section 910. Termination of Proceedings.**

In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the City, the Trustee and the Owners of Bonds shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### **Section 911. Waivers of Default.**

The Trustee shall waive any Default hereunder and its consequences and rescind any declaration of acceleration of principal upon (a) the written request of the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder) or (b) the written request of the Owners of (1) at least a majority in aggregate principal amount of all Outstanding Bonds in respect of which default in the payment of principal or interest, or both, exists or (2) at least a majority in aggregate principal amount of Outstanding Bonds in the case of any other Default and with the written consent of the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder); provided, however, that there shall not be waived any Default hereunder unless and until the Trustee shall have received written notice from the Credit Provider that the Credit Facility has been reinstated in full; and provided further that any Default under subsection (d)(2) of Section 901 causing the Bonds to be accelerated pursuant to Section 902(ii), may only be waived upon the written consent of the Credit Provider; and provided further that there shall not be waived any Default specified in subsection (a) or (b) of Section 901 unless prior to such waiver or rescission, the City shall have caused to be paid to the Trustee (i) all arrears of principal and interest (other than principal of or interest on the Bonds which became due and payable by declaration of acceleration), with interest at the rate then borne by the Bonds on overdue installments, to the extent permitted by law, and (ii) all fees and expenses of the Trustee and its agents and counsel in connection with such Default. In case of any waiver or rescission described above, or in case any proceeding taken by the Trustee on account of any such Default shall have been discontinued or concluded or determined adversely, then and in every such case the City, the Trustee and the Owners of Bonds shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Default, or impair any right consequent thereon.

Notwithstanding the foregoing, no waiver, rescission or annulment of a Default hereunder shall be made without the written consent of the Credit Provider if the Credit Provider shall theretofore have honored in full a drawing under the Credit Facility in respect of such Default.

#### **Section 912. Notice of Defaults Under Section 901(e); Opportunity to Cure Such Defaults.**

Anything herein to the contrary notwithstanding, no Default under Section 901(e) shall be deemed a Default until notice of such Default shall be given to the City by the Trustee or by the

Owners of not less than fifty percent (50%) in aggregate principal amount of all Outstanding Bonds, and the City shall have had thirty (30) days after receipt of such notice to correct said Default or to cause said Default to be corrected and shall not have corrected said Default or caused said Default to be corrected within the applicable period; provided, however, if said Default be such that it cannot be corrected within the applicable period, it shall not constitute a Default if corrective action is instituted by the City within the applicable period and diligently pursued until the Default is corrected.

**Section 913. Subrogation Rights of Credit Provider.**

(a) Anything in this Indenture to the contrary notwithstanding, so long as a Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder, upon the occurrence and continuance of a Default (as defined herein), the Credit Provider shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners or the Trustee for the benefit of the Owners under this Indenture, including, without limitation: (i) the right to accelerate the principal of the Series of Bonds secured by such Credit Facility as described in this Indenture, and (ii) the right to annul any declaration of acceleration.

(b) The Credit Provider shall be subrogated to the rights possessed under this Indenture by the Owners of the Bonds and the owners of Subordinate Debt, to the extent the Credit Facility is drawn upon and the amount of such drawing is not subsequently reimbursed to the Credit Provider. For purposes of the subrogation rights of the Credit Provider thereunder, (i) any reference therein to the Owners of the Bonds or Subordinate Debt shall mean the Credit Provider, (ii) any principal of or interest on the Bonds or Subordinate Debt paid with moneys collected pursuant to the Credit Facility shall be deemed to be unpaid thereunder, and (iii) the Credit Provider may exercise any rights it would have thereunder as the Owner of the Bonds or Subordinate Debt. The subrogation rights granted to the Credit Provider in this Indenture are not intended to be exclusive of any other remedy or remedies available to the Credit Provider and such subrogation rights shall be cumulative and shall be in addition to every other remedy given thereunder, under the Credit Agreement or under any other instrument or agreement with respect to the reimbursement of moneys paid by the Credit Provider under the Credit Facility or with respect to the security for the obligations of the City under the Credit Agreement, and every other remedy now or hereafter existing at law or in equity or by statute.

**ARTICLE X**

**TRUSTEE**

**Section 1001. Acceptance of Trusts.**

The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of a Default and after the curing of all Defaults which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case a Default has occurred (which has not been cured or

waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in the exercise of such rights and powers as an ordinary, prudent man would exercise or use in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees, and shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to advice of counsel of its own selection concerning its duties hereunder, and may in all cases pay such reasonable compensation (including fees and expenses) to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the City) selected by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss, liability, claim, expense or damage resulting from any action or inaction taken or not taken, as the case may be, in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the certificate of authentication endorsed on the Bonds), or for insuring the projects financed or refinanced with proceeds of the Bonds, or for collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the projects financed or refinanced with proceeds of the Bonds or any lien waivers with respect to the projects financed or refinanced with proceeds of the Bonds, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the City except as hereinafter set forth; but the Trustee may but is not obligated to require of the City full information and advice as to the performance of the aforesaid covenants, conditions and agreements.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transactions with the City and may act as a depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the City as freely as if it were not the Trustee. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee hereunder.

(e) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document (whether in its original or facsimile form) believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the City by the Chief Operating Officer or the Chief Financial Officer and attested by the Attesting Officer under his seal or such other person or persons as may be designated for such purpose by resolution of the City, as sufficient evidence of the facts therein contained and prior to the occurrence of a Default of which a Responsible Officer of the Trustee has been notified as provided in Section 1001(h), or of which by said subsection the Trustee is deemed to have notice, may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Municipal Clerk of the City under his seal to the effect that a resolution in the form therein set forth has been adopted by the City as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, discharge, the discharge of this Indenture and final payment of the Bonds.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder except for Defaults specified in subsections (a), (b), (c), or (d) of Section 901, unless a Responsible Officer of the Trustee shall be specifically notified in writing of such Default by the City, the Credit Provider or by the Owners of at least fifty percent (50%) in aggregate principal amount of Outstanding Bonds, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the Corporate Trust Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect all books and records of the City pertaining to the Bonds, and to make such copies and memoranda from and with regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of this Indenture or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, deemed desirable by the Trustee for the purpose of the authentication of any Bonds, the withdrawal of any cash or the taking of any other action.

(l) Before suffering, taking or omitting any action under this Indenture (other than (i) paying the principal or Purchase Price of, redemption premium (if any) and interest on the Bonds as the same shall become due and payable, (ii) drawing upon the Credit Facility, and (iii) declaring an acceleration under Section 902 as a result of a Default under Section 901(d), the Trustee may require that an indemnity bond satisfactory to it be furnished for the reimbursement of any expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent otherwise required herein or required by law.

(n) The Trustee's immunities and protections from liability and its right to compensation and indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal and final payment of the Bonds or termination of this Indenture.

(o) Notwithstanding anything else herein contained, (i) the Trustee shall not be liable for any error of judgment made in good faith unless it is proven by a final judgment of a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts, and (ii) no provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it believes the repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(p) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(q) The Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(r) The Trustee shall have no responsibility for any registration, filing, recording, reregistration or rerecording of this Indenture or any other document or instrument executed in connection with this Indenture and the issuance and sale of the Bonds including, without limitation, any financing statements or continuation statements with respect thereto.

(s) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this section shall not be construed to limit the effect of subsection (a) of this Section 1001;

(ii) the Trustee is not liable for any error of judgement made in good faith by a Responsible Officer, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee is not liable with respect to any action it takes or omits to be taken by it in good faith in accordance with the direction of the Bondholders under any provision of this Indenture relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(t) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability or affording protection to the Trustee is subject to the provisions of this Section.

(u) The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond debenture or other paper document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may seem fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the City, in person or by agent or attorney.

#### **Section 1002. Fees, Charges and Expenses of the Trustee.**

The City agrees to:

(a) to pay the Trustee compensation for all services rendered by it hereunder and under the other agreements relating to the Bonds to which the Trustee is a party in accordance with terms of the [**Trustee's fee proposal dated August 21, 2001, with respect to the Series 2001 Bonds**], and in accordance with other fee arrangements agreed to by the City and the Trustee from time to time with respect to any series of Additional Bonds, and, subsequent to default, in accordance with the Trustee's then-current fee schedule for default administration (the entirety of which compensation shall not be limited by any provision of law regarding compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, any other agreement relating to the Bonds to which it is a party or in complying with any request by the City or any rating agency with respect to the Bonds, including the reasonable compensation, expenses and disbursements of its agents and counsel, except any such expense, disbursement or advance attributable to the Trustee's negligence or bad faith; and

In the event that the Trustee incurs expenses or renders services in any proceeding under the Bankruptcy Code relating to the City, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the Bankruptcy Code.

Any provision hereof to the contrary, if the City fails to make any payment properly due the Trustee for its fees, costs and expenses incurred in the performance of its duties, the Trustee may reimburse itself from any surplus moneys on hand in any fund or account created pursuant hereto which are not otherwise then required for any payments to Bondholders and exclusive of the proceeds of any drawing under the Credit Facility, the proceeds of the remarketing of the Bonds, and funds held by the Trustee for matured and unrepresented Bonds. In the event the Trustee ceases to be the paying agent and registrar hereunder, that portion of the Trustee's fees attributable to such services shall be payable to such other entities performing such services. Notwithstanding any other provision of this Indenture, the provisions of this Section shall survive the satisfaction and discharge of this Indenture or the appointment of a successor Trustee.

### **Section 1003. Notice to Owners of Bonds if Default Occurs.**

If a Default occurs of which the Trustee has been notified as provided in Section 1001(h), or of which by said subsection it is deemed to have notice, then the Trustee shall promptly give notice thereof to the Credit Provider and to the Owner of each Bond.

### **Section 1004. Intervention by the Trustee.**

In any judicial proceeding to which the City is a party which has a substantial bearing on the interests of the Owners of the Bonds, the Trustee may intervene on behalf of the Owners of the Bonds and shall do so if requested in writing by the Credit Provider or the Owners of at least fifty percent (50%) of the aggregate principal amount of Outstanding Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

### **Section 1005. Successor Trustee.**

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

### **Section 1006. Resignation by the Trustee.**

The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' notice to the City, the Credit Provider, the Remarketing Agent, and the Owner of each Bond. Such resignation shall not take effect (i) until the appointment of a successor Trustee or temporary Trustee and the transfer to said successor or temporary Trustee

of the Credit Facility, and (ii) payment in full of all fees and expenses and other amounts payable to the Trustee pursuant thereto.

**Section 1007. Removal of the Trustee.**

The Trustee (including any Co-Trustee) may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the City and signed by (a) the Owners of at least a majority in aggregate principal amount of Outstanding Bonds, (b) the City provided that no Default has occurred and is continuing or (c) the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder) with the City's consent, which consent shall not be unreasonably withheld. Such removal shall not take effect until the appointment of a successor Trustee or temporary Trustee and the transfer to said successor or temporary Trustee of the Credit Facility.

**Section 1008. Appointment of Successor Trustee by Owners of Bonds.**

In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of at least a majority in aggregate principal amount of Outstanding Bonds, with the consent of the City and the Credit Provider (so long as the Credit Facility is in full force and effect and no default by the Credit Provider has occurred thereunder), which consent shall not be unreasonably withheld, by an instrument or concurrent instruments in writing signed by such Owners, or by their attorneys-in-fact duly authorized, a copy of which shall be delivered personally or sent by registered mail to the City and the Credit Provider. With the consent of the Credit Provider and the Remarketing Agent (which consents shall not be unreasonably withheld), the City by an instrument executed by the Chief Financial Officer and attested by the Attesting Officer under his seal may appoint a temporary successor Trustee to fill such vacancy until a successor Trustee shall be appointed by the Owners of Bonds in the manner above provided; and such temporary successor Trustee so appointed by the City shall immediately and without further act be superseded by the Trustee appointed by the Owners of Bonds. If no successor Trustee has accepted appointment in the manner provided in Section 1009 within sixty (60) days after the Trustee has given notice of resignation to the City and the Owner of each Bond, the Trustee may petition at the expense of the City any court of competent jurisdiction for the appointment of a temporary successor Trustee; provided that any Trustee so appointed shall immediately and without further act be superseded by a Trustee appointed by the City or the Owners of Bonds as provided above. Every successor Trustee appointed pursuant to the provisions of this Section shall be, if there be such an institution willing, qualified and able to accept the trust upon customary terms, a bank with trust powers or trust company and having a combined capital and surplus of not less than \$100 million (or an affiliate of a corporation or banking association meeting that requirement which guarantees the obligations and liabilities of the proposed trustee). Notice of the removal or appointment of the Trustee shall be provided to the Owners of the Bonds.

### **Section 1009. Acceptance by Successor Trustee.**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but its predecessor shall, nevertheless, on the written request of the City, or of its successor, and upon payment of all amounts owed to it, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

### **Section 1010. Appointment of Co-Trustee.**

(a) In case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, the Trustee may appoint an additional institution as a separate trustee or co-trustee, subject to the approval of the City.

(b) In the event that the Trustee appoints an additional institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them. Such co-trustee may be removed by the Trustee at any time, with or without cause.

### **Section 1011. Successor Remarketing Agent.**

(a) Any corporation or association into which the Remarketing Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Remarketing Agent hereunder, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(b) The Remarketing Agent may at any time resign by giving thirty (30) days' notice to the City, the Trustee and the Credit Provider. Such resignation shall not take effect until the appointment of a successor Remarketing Agent.

(c) The Remarketing Agent may be removed at any time by an instrument in writing delivered to the Trustee by the City, with the prior written approval of the Credit Provider (which approval shall not be unreasonably withheld). In no event, however, shall any removal of the Remarketing Agent take effect until a successor Remarketing Agent shall have been appointed.

(d) In case the Remarketing Agent shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting as Remarketing Agent, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the City with the prior written approval of the Credit Provider (which approval shall not be unreasonably withheld). Every successor Remarketing Agent appointed pursuant to the provisions of this Section shall be, if there be such an institution willing, qualified and able to accept the duties of the Remarketing Agent upon customary terms, a bank or trust company or any entity rated Baa3/Prime-3 or better, within or without the State of Georgia, in good standing and having reported capital and surplus of not less than \$10,000,000 and rated Baa3/Prime-3 or better by Moody's (or a substantially equivalent rating by such other rating agency then providing the rating borne by the Bonds). Written notice of such appointment shall immediately be given by the City to the Trustee and the Trustee shall cause written notice of such appointment to be given to the Owners of the Bonds. Any successor Remarketing Agent shall execute and deliver an instrument accepting such appointment and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of its predecessor, with like effect as if originally named as Remarketing Agent, but such predecessor shall nevertheless, on the written request of the City, the Trustee or the City, or of the successor, execute and deliver such instruments and do such other things as may reasonably be required to more fully and certainly vest and confirm in such successor all rights, powers, duties and obligations of such predecessor. If no successor Remarketing Agent has accepted appointment in the manner provided above within 90 days after the Remarketing Agent has given notice of its resignation as provided above, the Remarketing Agent may petition any court of competent jurisdiction for the appointment of a temporary successor Remarketing Agent; provided that any Remarketing Agent so appointed shall immediately and without further act be superseded by a Remarketing Agent appointed by the City as provided above.

#### **Section 1012. Notice to Rating Agencies.**

The Trustee shall provide Fitch, Moody's or S&P, as appropriate, so long as any of such rating agencies shall provide the rating borne by the Bonds, with prompt written notice following the effective date of such event, of which a Responsible Officer has actual knowledge, of (i) any successor Trustee and any successor Remarketing Agent, (ii) any Substitute Credit Provider, (iii) any material amendments to this Indenture and the Remarketing Agreement, (iv) the expiration, termination or extension of any Credit Facility, (v) the exercise of the Conversion Option, (vi) the occurrence of a Mandatory Purchase Date (other than a Mandatory Purchase Date following the end of a Calculation Period), (vii) the redemption in whole or in part of any Bonds or the payment in full of the Bonds at maturity, (viii) the defeasance of any Bonds, (ix) the issuance of Additional Bonds, or (x) the acceleration of the Bonds in connection with the nonreinstatement of the Credit Facility (in respect of interest), as provided in Section 901(d). In addition the Trustee shall provide Fitch, Moody's or S&P, as appropriate, so long as any of such rating agencies shall

provide the rating borne by the Bonds, with any other information which the rating agency may reasonably request in order to maintain the rating on the Bonds.

## ARTICLE XI

### SUPPLEMENTAL INDENTURES

#### **Section 1101. Supplemental Indentures Not Requiring Consent of Owners of Bonds.**

The City and the Trustee may, with the consent of the Credit Provider and upon receipt of an opinion of Bond Counsel to the effect that the proposed Supplemental Indenture will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by this Indenture, and without consent of, or notice to, any of the Owners of Bonds, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Owners of Bonds any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Owners of Bonds or the Trustee;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereof in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America;
- (e) To provide for the issuance, sale and delivery of Additional Bonds as provided in and upon compliance with Section 211 to provide for (1) the deposit and disbursement of the proceeds of such Additional Bonds to pay the expenses of the issuance of such Additional Bonds and the cost of all or any part of the facilities to be financed by means of such Additional Bonds or to refund another Series of Bonds, as the case may be, (2) the payment of the principal of, premium, if any, and interest on such Additional Bonds, and (3) such other changes necessary in connection with the issuance of such Additional Bonds as shall not, in the opinion of the Trustee, prejudice in any material respect the rights of the Owners of the Bonds then Outstanding;
- (f) To evidence the appointment of a separate or Co-Trustee or the succession of a new Trustee hereunder;
- (g) To correct any description of, or to reflect changes in, any of the properties comprising the Trust Estate;
- (h) To make any revisions of this Indenture that shall be required by Fitch, Moody's or S&P in order to obtain or maintain an investment grade rating on the Bonds;

(i) To make any revisions of this Indenture that shall be necessary in connection with the City furnishing a Credit Facility;

(j) To provide for an uncertificated system of registering the Bonds or to provide for changes to or from the Book-Entry System;

(k) To effect any other change herein as shall not, in the opinion of the Trustee, prejudice in any material respect the rights of the Owners of Bonds;

(l) To make revisions to this Indenture that shall become effective only upon, and in connection with, the remarketing of all of the Bonds then Outstanding; or

(m) To provide for the issuance of Subordinate Debt as provided in and upon compliance with this Indenture.

In the event Fitch, S&P and/or Moody's has issued a rating of any of the Bonds, Fitch, S&P and/or Moody's, as the case may be, shall receive prior written notice from the Trustee of the proposed amendment but such notice shall not be a condition of the effectiveness of such amendment.

#### **Section 1102. Supplemental Indentures Requiring Consent of Owners of Bonds.**

(a) Exclusive of Supplemental Indentures permitted by Section 1101 and subject to the terms and provisions contained in this Section, and not otherwise, the Credit Provider and the Owners of a majority in aggregate principal amount of the Outstanding Bonds and Outstanding Subordinate Debt shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture. During any Credit Facility Period, the Credit Provider shall be deemed the Owner of the related Series of Bonds and related Subordinate Debt for the purpose of this Section 1102(a).

(b) Nothing in this Section or in Section 1101 contained shall permit, or be construed as permitted in, without the consent of the Credit Provider and the Owners of all Bonds and all Subordinate Debt Outstanding, (a) an extension of the maturity of the principal amount or Purchase Price of, or redemption premium on, any Bond or Subordinate Debt issued hereunder, (b) a reduction in the principal amount or Purchase Price of, or redemption premium on any Bond or Subordinate Debt or the rate of interest thereon, (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or any Subordinate Debt over any other Subordinate Debt, (d) a reduction in the aggregate principal amount of the Bonds or Subordinate Debt required for consent to such Supplemental Indentures or any modifications or waivers of the provisions of this Indenture, or (e) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, or (f) the deprivation of any Owner of any Outstanding Bond or Outstanding Subordinate Debt of the lien hereby created on the Trust Estate.

(c) If at any time the City shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be given to the Credit Provider and to the Owners of the Bonds and Subordinate Debt; provided, that prior to the delivery of such notice, the Trustee shall be provided with an opinion of Bond Counsel to the effect that the Supplemental Indenture complies with the provisions of this Indenture and will not adversely affect the excludability of interest on the Bonds and Subordinate Debt from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Corporate Trust Office of the Trustee for inspection by all Owners of Bonds and Subordinate Debt. If, within sixty (60) days or such longer period as shall be prescribed by the City following such notice, the Credit Provider and the Owners of a majority in aggregate principal amount of the Bonds and Subordinate Debt Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof, no Owner of any Bond or any Subordinate Debt shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

(d) In the event Fitch, S&P and/or Moody's has issued a rating of any of the Bonds, Fitch, S&P and/or Moody's, as the case may be, shall receive prior written notice from the Trustee of the proposed amendment but such notice shall not be a condition of the effectiveness of such amendment.

(e) As long as a Majority Holder is the Holder of Index Rate Bonds or Long Term Bonds, any modification, amendment or supplement to this Indenture that requires the consent of Bondholders or adversely affects the rights and interest of such Majority Holder shall be subject to the prior written consent of such Majority Holder.

### **Section 1103. Opinion of Counsel Required.**

Anything in this Indenture to the contrary notwithstanding, the Trustee shall not execute any indenture supplemental to this Indenture unless there shall have been filed with the Trustee (a) an Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, that upon execution it will be valid and binding upon the City in accordance with its terms, and (b) a written opinion of Bond Counsel stating in effect that such supplemental indenture will not adversely affect the excludability from gross income for federal income tax purposes interest on the Bonds the interest on which when issued was excludable from gross income for federal income tax purposes.

### **Section 1104. Trustee's Obligation Regarding Supplemental Indentures.**

The Trustee shall not unreasonably refuse to enter into any supplemental indenture permitted by this article.

## ARTICLE XII

### MISCELLANEOUS

#### **Section 1201. Consents of Owners of Bonds.**

Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners of Bonds may be in any number of concurrent documents and may be executed by such Owners of Bonds in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the written appointment of any such agent or of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument. The fact and date of the execution by any person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by an officer authorized by law to take acknowledgments of deeds certifying that the person signing such instrument or writing acknowledged to him the execution thereof. The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of owning the same shall be proved by the registration books of the City maintained by the Trustee pursuant to Section 212.

#### **Section 1202. Limitation of Rights.**

With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, the Credit Provider and the Owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Credit Provider and the Owners of the Bonds as herein provided.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future officer, member, employee or agent of the City and neither the members of City Council of the City nor any officer thereof executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No officer, member, employee or agent of the City shall incur any personal liability with respect to any other action taken by him pursuant to this Indenture or the Act, provided such officer, member, employee or agent does not act in bad faith.

#### **Section 1203. Severability.**

If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

#### **Section 1204. Notices.**

Unless otherwise provided herein, all demands, notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the City, at City of Atlanta, Department of Law, 68 Mitchell Street, Suite 4100, Atlanta, Georgia 30335-0332 (Attention: City Attorney), (b) if to the Trustee, at The Bank of New York Mellon, 100 Ashford Center North, Suite 520 Atlanta, Georgia 30338 (Attention: Corporate Trust Department), or (c) if to S&P, at 55 Water Street, 38<sup>th</sup> Floor, New York, New York 10041 (Attention: Municipal Structured Group). The City and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

A duplicate copy of each notice required to be given hereunder by any person listed above shall also be given to the others. The City and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Except for those writings requiring original signatures, any written notice, instruction or confirmation required hereunder may be provided by telex, telegraph or facsimile transmission.

#### **Section 1205. Payments Due on Saturdays, Sundays and Holidays.**

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for purchase or redemption of any Bonds shall not be a Business Day, then payment of principal, Purchase Price, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for purchase or redemption, and in case any payment of the principal or redemption price of or interest on the Bonds shall be due on a date that is not a Business Day, interest on such principal amount shall cease to accrue on the date on which such payment was due if payment is made on the immediately succeeding Business Day.

#### **Section 1206. Counterparts.**

This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of such shall constitute but one and the same instrument.

#### **Section 1207. Applicable Provisions of Law.**

This Indenture shall be governed by and construed in accordance with the laws of the State of Georgia.

#### **Section 1208. Rules of Interpretation.**

Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other

equivalent words refer to this Indenture and not solely to the particular portion in which such word is used.

**Section 1209. Captions.**

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

**Section 1210. Certain References Ineffective Except During a Credit Facility Period.**

Except during a Credit Facility Period and during the period immediately after a Credit Facility Period until receipt by the Trustee of a certificate from the Credit Provider stating that all amounts payable to the Credit Provider under the Credit Agreement have been paid in full, all references to the Credit Provider, the Credit Agreement or the Credit Facility in this Indenture and the Bonds shall be ineffective.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**CITY OF ATLANTA, GEORGIA**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Municipal Clerk

**THE BANK OF NEW YORK MELLON,**  
as Trustee

By \_\_\_\_\_

Its \_\_\_\_\_

FORM OF BOND

THIS BOND IS SUBJECT TO MANDATORY TENDER BY THE REGISTERED OWNER FOR PURCHASE AT THE TIMES AND IN THE MANNER HEREINAFTER DESCRIBED, AND MUST BE SO TENDERED OR WILL BE DEEMED TO HAVE BEEN SO TENDERED UNDER CERTAIN CIRCUMSTANCES DESCRIBED HEREIN.

[INTEREST RATE: \_\_\_\_% LAST DAY OF COMMERCIAL PAPER PERIOD: \_\_\_\_\_]

INTEREST SHALL BE PAID ON THE DAY FOLLOWING THE LAST DAY OF THE COMMERCIAL PAPER PERIOD AND ON SUCH DATE THE REGISTERED OWNER OF THIS BOND SHALL BE REQUIRED TO TENDER THIS BOND FOR PURCHASE IN THE MANNER HEREINAFTER DESCRIBED, AND IF NOT SO TENDERED THIS BOND WILL BE DEEMED TO HAVE BEEN SO TENDERED.]<sup>1</sup>

[THIS BOND SHALL BEAR INTEREST AT THE RATE OF \_\_\_\_% PER ANNUM, PAYABLE ON \_\_\_\_\_ 1 AND \_\_\_\_\_ 1, UNTIL \_\_\_\_\_ 1, \_\_\_\_\_.]<sup>2</sup> [ON SUCH DATE THIS BOND IS SUBJECT TO MANDATORY TENDER FOR PURCHASE IN THE MANNER HEREINAFTER DESCRIBED, AND MUST BE SO TENDERED OR WILL BE DEEMED TO HAVE BEEN SO TENDERED UNDER CERTAIN CIRCUMSTANCES DESCRIBED HEREIN.]<sup>3</sup>

No. R-1

UNITED STATES OF AMERICA  
CITY OF ATLANTA, GEORGIA  
TAX ALLOCATION VARIABLE RATE BONDS  
(WESTSIDE PROJECT),  
SERIES [2001-R][2005A-R][2005B-R][2008-R]

MATURITY DATE: \_\_\_\_\_ DATE: \_\_\_\_\_  
INTEREST PERIOD: \_\_\_\_\_ CUSIP: \_\_\_\_\_

REGISTERED OWNER: Cede & Co. PRINCIPAL AMOUNT: \$\_\_\_\_\_

<sup>1</sup> This legend to appear only on the face of Bonds bearing interest at the Commercial Paper Rate.  
<sup>2</sup> This legend to appear only on the face of Bonds bearing interest at a Long Term Rate.  
<sup>3</sup> This legend to appear only on face of Bonds bearing interest at Long Term Rate for period ending before the maturity of the Bonds.

[The legend in the two paragraphs immediately following shall appear so long as the Book-Entry System described in Section 216 of the Indenture has not been discontinued.]

THE CITY HAS ESTABLISHED A BOOK-ENTRY SYSTEM OF REGISTRATION FOR THIS BOND. EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE IN THE INDENTURE, CEDE & CO., AS NOMINEE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), WILL BE THE REGISTERED OWNER AND WILL HOLD THIS BOND ON BEHALF OF EACH BENEFICIAL OWNER HEREOF. BY ACCEPTANCE OF A CONFIRMATION OF PURCHASE, DELIVERY OR TRANSFER, EACH BENEFICIAL OWNER OF THIS BOND SHALL BE DEEMED TO HAVE AGREED TO SUCH ARRANGEMENT. CEDE & CO., AS REGISTERED OWNER OF THIS BOND, MAY BE TREATED AS THE OWNER OF IT FOR ALL PURPOSES.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, WITH RESPECT TO ANY BOND ISSUED THAT IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS BOND IS SUBJECT TO MANDATORY TENDER FOR PURCHASE AT THE TIMES AND IN THE MANNER HEREINAFTER DESCRIBED, AND MUST BE SO TENDERED OR WILL BE DEEMED TO HAVE BEEN SO TENDERED UNDER CERTAIN CIRCUMSTANCES DESCRIBED HEREIN.

The **CITY OF ATLANTA, GEORGIA**, a municipal corporation of the State of Georgia (the “City”), for value received, promises to pay from the source and as hereinafter provided, to the Registered Owner identified above on the Maturity Date set forth above, upon surrender hereof, the Principal Amount set forth above, and in like manner to pay interest on said sum at the rates and on the dates described below, from the dated date as set forth above and thereafter from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication hereof to which interest has been paid or duly provided for, unless the date of authentication hereof is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication hereof, or unless no interest has been paid or duly provided for on the Bonds (as hereinafter defined), in which case from the dated date of the Bonds, until payment of the principal hereof has been made or duly provided for. Notwithstanding the foregoing, if the date of authentication of this Bond is after that day which is the Business Day next preceding any Interest Payment Date, during any Short Term Period or Commercial Paper Period (each as hereinafter defined), or the fifteenth day of the calendar month next preceding any Interest Payment Date, during any Long Term Period (as hereinafter defined) (the “Record Date”) and before the following Interest Payment Date, this Bond shall bear interest from such Interest Payment Date; provided, however, that if the City shall default in the payment of interest due on such Interest Payment Date, then this Bond shall bear interest from the next preceding Interest

Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the dated date of the Bonds. The principal of this Bond is payable in lawful money of the United States of America at the principal corporate trust office of The Bank of New York Mellon, Atlanta, Georgia, as trustee (together with its successors in trust, the "Trustee"), or at the duly designated office of any successor Trustee under the Amended and Restated Indenture of Trust dated as of \_\_\_\_\_, 2018, between the City and the Trustee (as from time to time amended and supplemented, the "Indenture"). Payment of interest on this Bond shall be made on each Interest Payment Date to the Registered Owner hereof as of the applicable Record Date and shall be paid by check mailed by the Trustee to such Registered Owner at his address as it appears on the registration books of the Trustee or at such other address as is furnished to the Trustee in writing by such Registered Owner, or in such other manner as may be mutually acceptable to the Trustee and the Registered Owner of this Bond. The Purchase Price (as hereinafter defined) of this Bond shall be payable by the Trustee, to the Registered Owner hereof at his address as it appears on the registration books of the Trustee or at such other address as may be specified by such Registered Owner in writing at least 24 hours prior to the time such Purchase Price is due. The Bonds shall bear interest at the Short Term Rate, the Commercial Paper Rate or the Long Term Rate (each as hereinafter defined), as the same shall be determined from time to time, pursuant to the Indenture, plus interest on overdue installments of interest, to the extent permitted by law, at the rate of interest borne by the Bonds. During the Commercial Paper Period and any Short Term Period with a duration of one week or one month, interest shall be calculated on the basis of actual days elapsed in a 365- or 366-day year, as the case may be. During the Long Term Period and any Short Term Period with a duration of three months or six months, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Anything herein contained to the contrary notwithstanding, the interest rate shall not exceed 12% per annum. During any Short Term Period or Commercial Paper Period, the Bonds shall be issuable as fully registered Bonds without coupons in the denomination of \$100,000, or any multiple of \$5,000 in excess thereof. During any Long Term Period, the Bonds shall be issuable as fully registered Bonds without coupons in the denomination of \$5,000 or any multiple thereof.

During any Short Term Period interest shall be paid on the first day of the next succeeding Interest Period and the maturity date of the Bonds (the "Short Term Interest Payment Date"); provided, that so long as the Short Term Period is one week in duration, the term Short Term Interest Payment Date shall mean the first day of the calendar month. During any Commercial Paper Period interest shall be paid on the first day after the end of any Calculation Period (as hereinafter defined) (the "Commercial Paper Interest Payment Date"). During any Long Term Period interest shall be paid on the first day of the sixth calendar month after the beginning of the Long Term Period, the first day of each sixth calendar month thereafter until the end of the Long Term Period, any redemption date with respect to all of the Bonds, and the maturity date of the Bonds (the "Long Term Interest Payment Date"). Each of the Short Term Interest Payment Dates, the Commercial Paper Interest Payment Dates and the Long Term Interest Payment Dates are referred to herein as an "Interest Payment Date." Each of the Short Term Period, the Commercial Paper Period and the Long Term Period are referred to herein as an "Interest Period."

This Bond and the issue of which it is a part are limited obligations of the City payable solely from the sources and funds pledged for their benefit pursuant to the Indenture. THIS BOND SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OF THE CITY NOR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY AND SHALL NOT OTHERWISE CONSTITUTE AN INDEBTEDNESS OR A CHARGE AGAINST THE GENERAL TAXING POWER OF THE CITY, FULTON COUNTY, GEORGIA, OR THE BOARD OF EDUCATION OF THE CITY. THIS BOND SHALL NOT BE PAYABLE FROM A CHARGE UPON ANY FUNDS OTHER THAN THE REVENUES AND AMOUNTS PLEDGED TO THE PAYMENT THEREOF, NOR SHALL THE CITY BE SUBJECT TO ANY PECUNIARY LIABILITY THEREON. NO OWNER OR OWNERS OF THIS BOND SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY TO PAY THIS BOND OR THE INTEREST HEREON, NOR TO ENFORCE PAYMENT OF THIS BOND AGAINST ANY PROPERTY OF THE CITY, NOR SHALL THIS BOND CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE CITY, EXCEPT OF THE REVENUES AND ANY OTHER FUNDS PLEDGED TO SECURE THIS BOND.

This Bond is one of an authorized issue of \$\_\_\_\_\_ City of Atlanta, Georgia, Tax Allocation Variable Rate Bonds (Westside Project), Series \_\_\_\_ (the "Bonds"), issued pursuant to the Indenture for the purpose of providing funds to pay certain Redevelopment Costs (as defined in the Indenture) within the Westside TAD (as defined in the Indenture).

The Bonds are all issued under and are equally and ratably secured by and entitled to the protection of the Indenture.

Reference is hereby made to the Indenture for a description of the property pledged and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City, the Trustee and the Registered Owners of the Bonds and the terms upon which the Bonds are issued and secured. All capitalized terms used, but not defined, are defined in the Indenture and are used herein in the same manner and with the same meaning as in the Indenture.

For so long as the Bonds are held in a Book-Entry System and so long as a Securities Depository or its nominee is the Registered Owner of the Bonds, references herein to the Registered Owners shall mean such Securities Depository and not the beneficial owners. Neither the Trustee nor the City shall be responsible or liable for maintaining, supervising or reviewing the records maintained by the Securities Depository, its participants or persons acting through such participants.

The transfer of this Bond may be registered by the Registered Owner hereof in person or by his attorney duly authorized in writing, at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds of authorized denomination or denominations for the same series and aggregate principal amount will be issued to the transferee in exchange therefor. The City and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof (whether or not

this Bond shall be overdue) for all purposes, and neither the City nor the Trustee shall be bound by any notice or knowledge to the contrary.

**Short Term Period.** From the date of issuance of this Bond until the next following Conversion Date and from any subsequent Conversion Date after which the Bonds will bear interest at a Short Term Rate until the next following Conversion Date, the Bonds shall bear interest at the Short Term Rate in effect for the applicable Short Term Period. The Short Term Rate for (a) the period from the date of issuance and delivery of the Bonds to and including the next succeeding Wednesday (unless the Bonds are issued and delivered on a Wednesday, in which case the first Interest Period shall include only such Wednesday), (b) any period of time of one week's duration (each a "Weekly Period"), provided that the period commences on Thursday of each week and continues through Wednesday of the following week, provided further, however, that if any such period is to commence after an adjustment of the Short Term Period or a conversion to a Short Term Period, then the first Weekly Period following such adjustment or conversion shall commence on the Short Term Adjustment Date or Conversion Date, as the case may be, and continue through the succeeding Wednesday, (c) any period of time of one calendar month's duration, provided that the period commences on the first day of each calendar month and terminates on the last day of such calendar month, (d) any period of time of three calendar months' duration, provided that the period commences on the first day of the first calendar month and terminates on the last day of the third calendar month, and (e) any period of time of six calendar months' duration, provided that the period commences on the first day of the first calendar month and terminates on the last day of the sixth calendar month (each a "Short Term Period"), will be determined by the Remarketing Agent on the first day of each Short Term Period (or if such day is not a Business Day, the immediately preceding Business Day), as follows: the interest rate for each Short Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par (as defined in the Indenture) on such date (the "Short Term Rate"). No Short Term Rate shall be determined for a Short Term Period beginning on or after the Business Day immediately preceding an Interest Payment Date, and the Bonds shall bear interest during such Short Term Period at the rate in effect for the immediately preceding Short Term Period of the same duration.

The City shall instruct the Remarketing Agent, not later than the 20th day prior to the Short Term Adjustment Date (as hereinafter defined) to determine the Short Term Rate on the basis of a Short Term Period of one week, one calendar month, three calendar months or six calendar months. The first day of each Short Term Period that has a duration different from the preceding Short Term Period shall be a "Short Term Adjustment Date." The duration of the Short Term Period may be adjusted effective only on the day following the last day of the preceding Short Term Period; provided, however, that a Short Term Period of one week's duration may be adjusted to any other authorized duration only on the first day of each calendar month. In the event the duration of the Short Term Period is to be adjusted from one week to another authorized duration for a Short Term Period or if the Conversion Option (as hereinafter defined) has been exercised and the new Interest Period will begin on the first day of a calendar month, and the expiration of the last Short Term Period prior to the first day of the calendar month does not occur on the last day of a calendar month, then in such event the duration of such

Short Term Period shall be increased or decreased at the discretion of the Remarketing Agent, by not more than six days, in order to cause the expiration of such Interest Period to occur on the last day of the calendar month.

If the City has exercised the Conversion Option to convert the Bonds to a Short Term Period, the City shall instruct the Remarketing Agent, not later than the 20th day prior to the Conversion Date, to determine the Short Term Rate on the basis of a Short Term Period selected in exercising the Conversion Option.

The determination of the Short Term Rate (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Short Term Rate for any Short Term Period, the Bonds shall bear interest during such Short Term Period at the Short Term Rate in effect during the immediately preceding Short Term Period.

**Commercial Paper Period.** From any Conversion Date after which the Bonds will bear interest at a Commercial Paper Rate until the next following Conversion Date (the “Commercial Paper Period”), the Bonds will bear interest at the various Commercial Paper Rates for the various Calculation Periods, as hereinafter described. During any Commercial Paper Period, any Bond may have a different Calculation Period and a different Commercial Paper Rate from any other Bond.

At or prior to 12:00 noon New York City time on any Conversion Date after which the Bonds will bear interest at the Commercial Paper Rate and the day immediately after the end of such Calculation Period (or if such day is not a Business Day, the immediately preceding Business Day), the Remarketing Agent shall establish any period or periods comprised of up to 270 days as calculation periods (the “Calculation Period”) with respect to Bonds for which no Calculation Period is currently in effect. The Remarketing Agent shall select the Calculation Periods and the applicable Commercial Paper Rates that, together with all other Calculation Periods and related Commercial Paper Rates, in the sole judgment of the Remarketing Agent, will result in the lowest overall borrowing cost on the Bonds or are otherwise in the best financial interests of the City, as determined in consultation with the City; provided, however, during any Credit Facility Period, no Bond shall have a Calculation Period of less than three (3) days. Any Calculation Period established under the Indenture may not extend beyond (a) any Conversion Date, (b) during any Credit Facility Period, the second Business Day next preceding the later of (i) that date upon which the Credit Facility shall expire or terminate pursuant to its terms, and (ii) that date to which the expiration or termination of the Credit Facility may be extended, from time to time, either by extension or renewal of the existing Credit Facility or the issuance of a Substitute Credit Facility, during any Credit Facility Period, or (c) the day prior to the maturity date of the Bonds.

On the first day of each Calculation Period (or if such day is not a Business Day, the immediately preceding Business Day), the Remarketing Agent shall set rates by 12:00 noon New York City time for the Bonds for such Calculation Period. With respect to each Calculation Period, the interest rate shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market

conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date of such determination (the “Commercial Paper Rate”).

The determination of the Commercial Paper Rates and Calculation Periods (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider (if any) and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Commercial Paper Rates or the Calculation Periods for any Bonds during the Commercial Paper Period, or in the event no Calculation Period may be established pursuant to the terms of the Indenture, then the Calculation Period for any such Bond shall be a period of 30 days and the Commercial Paper Rate for such Calculation Period shall be 70% of the interest rate applicable to 91-day United States Treasury bills determined on the basis of the average per annum discount rate at which 91-day United States Treasury bills shall have been sold at the most recent Treasury auction conducted during the preceding 30 days.

**Long Term Period.** From any Conversion Date after which the Bonds will bear interest at a Long Term Rate until the next following Conversion Date or the maturity of the Bonds, the Bonds will bear interest at a Long Term Rate, as hereinafter described.

The Long Term Rate for any period of time that is an integral multiple of 12 calendar months in duration (provided that in all events the period must begin on the first day of the first calendar month and end on the last day of a calendar month or upon maturity), as determined by the City (each a “Long Term Period”), will be determined by the Remarketing Agent, as follows: the interest rate for each Long Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date of such determination (the “Long Term Rate”). The Long Term Rate shall be determined by the Remarketing Agent not later than the fifth day next preceding the commencement of such Long Term Period.

The City shall instruct the Remarketing Agent, not later than the 20th day prior to the commencement of such Long Term Period, to determine the Long Term Rate on the basis of a Long Term Period ending on a specified date that is the last day of any calendar month that is an integral multiple of 12 calendar months from the beginning of such Long Term Period or upon maturity. If at the end of a Long Term Period the City does not elect to have another Long Term Period apply or exercise the Conversion Option or has elected to have another Long Term Period but failed to deliver the documentation required pursuant to the Indenture, then the Bonds shall be deemed to be in a Short Term Period of one week’s duration and the Short Term Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on the Bonds was to be set.

The determination of the Long Term Rate (absent manifest error) shall be conclusive and binding upon the City, the Trustee, the Credit Provider (if any) and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Long Term Rate for any Long Term Period, the Bonds shall be deemed to be in a Short Term Period of one week’s duration and the Short Term Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime

paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the interest rate on the Bonds was to be set.

**Conversion Option.** The City shall have the option (the “Conversion Option”) to direct a change in the type of Interest Period to another type of Interest Period by delivering to the Trustee and the Remarketing Agent written instructions setting forth (i) the date on which the interest rate on the Bonds is to be converted from one type of Interest Period to another type of Interest Period (the “Conversion Date”), which date shall be an Interest Payment Date for the Interest Period currently in effect and that is at least six calendar months after the date of issuance of the Bonds or the last preceding Conversion Date, (ii) the new type of Interest Period, (iii) if the new type of Interest Period is a Short Term Period or a Long Term Period, the duration of such period and (iv) whether such Interest Period will be a Credit Facility Period. If the new Interest Period is a Long Term Period and will be a Credit Facility Period, such instructions will be accompanied by a Substitute Credit Facility, or by an amendment to the existing Credit Facility, providing for the payment of the redemption premium (if any) on the Bonds during such Long Term Period. Such instructions shall be delivered at least 20 days prior to the first day of such Interest Period. If the City fails to deliver certain documentation, as described in the Indenture, the Bonds shall continue in the Interest Period in place at the time of the attempted exercise of the Conversion Option.

Any change in the type of Interest Period must comply with the following: (i) the Conversion Date must be the day following the end of an Interest Period and (ii) no change in Interest Period shall occur after an Event of Default shall have occurred and be continuing.

**Mandatory Tender for Purchase of Bonds on Mandatory Purchase Date.** The Bonds shall be subject to mandatory tender by the Registered Owners thereof for purchase on (a) each Conversion Date, (b) each Short Term Adjustment Date, (c) each day immediately following the end of a Calculation Period, (d) the first day of any Long Term Period, (e) unless there will be a Mandatory Purchase Date pursuant to (f), the Interest Payment Date immediately before the Credit Facility Termination Date, (f) the Interest Payment Date concurrent with the effective date of a Substitute Credit Facility, and (g) the first Interest Payment Date following the occurrence of a Determination of Taxability (as defined in the Indenture), for which the Trustee can give notice of mandatory tender in accordance with the Indenture (each a “Mandatory Purchase Date”).

Except when the Bonds are subject to mandatory tender on a day immediately following the end of a Calculation Period, the Trustee shall deliver or mail by first class mail a notice in substantially the form required by the Indenture at least fifteen days prior to the Mandatory Purchase Date to the Registered Owners of the Bonds. When the Bonds are subject to mandatory tender for purchase on the day immediately following the end of a Calculation Period, the Trustee is not required to deliver or mail any notice to the Registered Owners of the Bonds.

Any notice given by the Trustee as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for purchase as to any Registered Owner to whom proper notice is mailed.

On each Mandatory Purchase Date, Registered Owners of Bonds shall be required to tender their Bonds to the Trustee by 10:00 A.M. New York City time for purchase at a purchase price equal to 100% of the principal amount of the Bonds tendered or deemed tendered (the “Mandatory Purchase Price”), and any such Bonds not so tendered on the Mandatory Purchase Date (“Untendered Bonds”) shall be deemed to have been purchased pursuant to the Indenture. In the event of a failure by a Registered Owner of Bonds to tender its Bonds on or prior to the Mandatory Purchase Date by the requisite time, said Registered Owner shall not be entitled to any payment (including any interest to accrue subsequent to the Mandatory Purchase Date) other than the Purchase Price for such Untendered Bonds, and any Untendered Bonds shall no longer be entitled to the benefits of the Indenture, except for the purpose of payment of the Purchase Price therefor.

**Demand Purchase Option.** Any Bond bearing interest at the Short Term Rate shall be purchased from the Registered Owners thereof at a purchase price equal to 100% of the principal amount of the Bond tendered or deemed tendered, plus accrued and unpaid interest thereon to the date of purchase (such purchase price, together with the Mandatory Purchase Price, the “Purchase Price”), upon: (a) delivery to the Trustee at its principal corporate trust office and to the Remarketing Agent at its principal office of a written notice (said notice to be irrevocable and effective upon receipt) which (i) states the aggregate principal amount and Bond numbers of the Bonds to be purchased; and (ii) states the date on which such Bonds are to be purchased, which date shall be a Tender Date not prior to the seventh day next succeeding the date of delivery of such notice; and (b) delivery to the Trustee at its delivery office at or prior to 10:00 A.M. New York City time on the date designated for purchase in the notice described in (a) above of such Bonds to be purchased, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank.

**“Tender Date”** means (a) during any Short Term Period of other than one week’s duration, any Interest Payment Date, and (b) during any Short Term Period of one week’s duration, the seventh day (unless such day is not a Business Day, in which case the next Business Day) following receipt by the Trustee of notice from the Registered Owner that such Registered Owner has elected to tender Bonds.

**Extraordinary Redemption.** During any Long Term Period, the Bonds are subject to redemption in whole or in part (in an amount of not less than \$100,000) by the City, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date, in the event all or substantially all of a Series \_\_\_\_ Project (as defined in the Indenture) shall have been damaged or destroyed, or there occurs the condemnation of all or substantially all of a Series \_\_\_\_ Project or the taking by eminent domain of such use or control of a Series \_\_\_\_ Project as to render it, in the judgment of the City, unsatisfactory for its intended use for a period of time longer than one year.

**Optional Redemption.** During any Short Term Period, the Bonds are subject to redemption by the City, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date.

On any Conversion Date or Short Term Adjustment Date or on the day following the end of a Calculation Period if such day is the end of the Calculation Period for all Bonds, the Bonds are subject to redemption by the City, in whole or in part, less than all such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to the redemption date.

During any Long Term Period, the Bonds are subject to redemption by the City, on or after the First Optional Redemption Date (as defined below), in whole or in part at any time, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, on or after dates and at the redemption prices as determined by the City on or prior to the Conversion Date commencing such Long Term Period provided that such prices do not reflect a redemption premium exceeding 3%.

“First Optional Redemption Date” means, (i) with respect to a Long Term Period less than or equal to 5 years, the first day of the 24th calendar month from the beginning of such Long Term Period, (ii) with respect to a Long Term Period greater than 5 years but less than or equal to 10 years, the first day of the 60th calendar month from the beginning of such Long Term Period, and (iii) with respect to a Long Term Period greater than 10 years, the first day of the 72nd calendar month from the beginning of such Long Term Period.

In the event any of the Bonds or portions thereof are called for redemption as aforesaid, notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by the Trustee by mailing a copy of the redemption notice by first class mail at least 30 days but not more than 60 days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books (no notice shall be required with respect to optional redemption on a Conversion Date, a Short Term Adjustment Date or the day following the end of the Calculation Period for all Bonds). Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for redemption as to any Registered Owner to whom proper notice is mailed. No further interest shall accrue on the principal of any Bond called for redemption after the date of redemption if moneys sufficient for such redemption have been deposited with the Trustee. Notwithstanding the foregoing, the notice requirements contained in the first sentence of this paragraph may be deemed satisfied with respect to a transferee of a Bond which has been purchased pursuant to the Demand Purchase Option after such Bond has previously been called for redemption, notwithstanding the failure to satisfy the notice requirements of the first sentence of this paragraph with respect to such transferee, as more fully provided in the Indenture.

**[Mandatory Sinking Fund Redemption.** The Series 2008 Bonds shall mature on December 1, 2037. The Series 2008 Bonds are subject to scheduled mandatory redemption on December 1 in the following years and in the following principal amounts at a redemption price equal to 100% thereof, plus accrued interest to the redemption date:

<u>December 1</u> <u>of the Year</u>	<u>Principal</u> <u>Amount</u>
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2023	\$27,830,000
2037*	35,930,000

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\*Maturity.]

Notwithstanding anything to the contrary contained herein or in the Indenture, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future director, officer, employee or agent of the City, or of any member, director, trustee, officer, employee or agent of any successor to the City, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his individual capacity, either directly or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

The Registered Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, unless certain circumstances described in the Indenture shall have occurred. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the Registered Owners of the Bonds at any time by the City with the consent of the Credit Provider and the Registered Owners of a majority in aggregate principal amount of the Bonds at the time outstanding. During any Credit Facility Period, the Credit Provider, with certain exceptions, shall be deemed the Registered Owner of the Bonds for the purpose of approving such amendments. Any such consent or any waiver by the Credit Provider and the Registered Owners of a majority in the aggregate principal amount of the Bonds shall be conclusive and binding upon the Registered Owner and upon all future Registered Owners of this Bond and of any Bond issued in replacement hereof whether or not notation of such consent or waiver is made upon this Bond. The Indenture also contains provisions which, subject to certain conditions, permit or require the Trustee to waive certain past defaults under the Indenture and their consequences.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form

and manner as required by law; that the issuance of this Bond and the issue of which it forms a part, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation; and that the amounts pledged to the payment of the principal of and premium, if any, and interest on this Bond and the issue of which it forms a part, as the same become due, will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been signed by the Trustee, as authenticating agent.

IN WITNESS WHEREOF, the City of Atlanta, Georgia has caused this bond to be executed with the signature of the Mayor of the City and the City's seal to be impressed hereon and attested by the signature of the Municipal Clerk.

CITY OF ATLANTA, GEORGIA

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Municipal Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: \_\_\_\_\_

This bond is one of the Bonds described in the within-mentioned Indenture.

**THE BANK OF NEW YORK MELLON,**  
as Trustee

By \_\_\_\_\_  
Authorized Agent

(Form of Validation Certificate)

VALIDATION CERTIFICATE

STATE OF GEORGIA

COUNTY OF FULTON

The undersigned Clerk of the Superior Court of Fulton County, Georgia, HEREBY CERTIFIES that the within bond was confirmed and validated by judgment of the Superior Court of Fulton County, Georgia, Civil Action File No. \_\_\_\_\_, rendered on the \_\_\_ day of \_\_\_\_\_, that no intervention or objection was filed thereto and that no appeal has been taken therefrom.

WITNESS the manual or duly authorized reproduced facsimile of my signature and the reproduced facsimile of said Court.

(SEAL)

[FORM] \_\_\_\_\_  
Clerk, Superior Court,  
Fulton County, Georgia

(Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

(Please print or typewrite Name and Address, including zip code of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF TRANSFEREE

\_\_\_\_\_  
\_\_\_\_\_

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_

Attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

Registered Owner:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agents Medallion Program ("STAMP") or similar program.

\_\_\_\_\_  
NOTE: The signature above must correspond with the name of the registered owner as it appears on the front of this bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

**FORM OF NOTICE FROM TRUSTEE TO OWNER  
REGARDING MANDATORY PURCHASE DATE**

[Name and address of Owner]

Re: \$\_\_\_\_\_ Tax Allocation Variable Rate Bonds (Westside Project), Series 20\_\_

The undersigned officer of The Bank of New York Mellon, as Trustee with respect to the captioned Bonds (the “Bonds”), pursuant to the provisions of Section 401 of that certain Amended and Restated Indenture of Trust (the “Indenture”), dated as of \_\_\_\_\_, 2018, by and between the City of Atlanta, Georgia, and the Trustee, does hereby notify you that the Bonds are subject to mandatory tender on \_\_\_\_\_ (the “Mandatory Purchase Date”). All owners of Bonds shall be deemed to have tendered their Bonds for purchase on the Mandatory Purchase Date and shall no longer be entitled to the benefits of the Indenture; interest will cease to accrue on such Bonds for the benefit of the owners of the Bonds on and after the Mandatory Purchase Date. The Bonds should be delivered to the Trustee at \_\_\_\_\_, Attention: \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**THE BANK OF NEW YORK MELLON,**  
as Trustee

\_\_\_\_\_  
Title:

No. \_\_\_\_\_

REQUISITION

\_\_\_\_\_, 20\_\_

Name of Westside Project:

The Bank of New York Mellon  
100 Ashford Center, Suite 520  
Atlanta, Georgia 30338

Sirs:

The undersigned hereby requisitions from the Project Account created by the Amended and Restated Indenture of Trust dated as of \_\_\_\_\_, 2018 (the "Indenture"), between the City of Atlanta, Georgia, and you as Trustee, the sum of \$\_\_\_\_\_ to be paid to \_\_\_\_\_, as "Developer," to reimburse the Developer for the Developer's prior expenditure of Redevelopment Costs as part of the acquisition and construction of the \_\_\_\_\_ Project, as that term is defined in the Indenture.

Such obligation has been incurred in or about the acquisition and construction of the \_\_\_\_\_ Project, and each item is a proper charge against the Cost of the Project, as defined in the Indenture, and such obligation has not been the basis for a prior requisition that has been paid.

**COUNTERSIGNED:**

**ATLANTA DEVELOPMENT AUTHORITY**

By \_\_\_\_\_  
Title \_\_\_\_\_

**[CITY OF ATLANTA\***

By \_\_\_\_\_  
Its \_\_\_\_\_]

\_\_\_\_\_  
\*The City, and not Atlanta Development Authority, will countersign requisitions in respect of the Historic Westside Village Project Redevelopment Costs.

**SERIES 2001 PROJECTS**

<u>Project Name</u>	<u>Developer</u>
1. Historic Westside Village	Westside Partners
2. Centennial Hill (Museum Tower)	CHDP CONDO, LLC
3. Northyards Business Park (Roundhouse)	Northyards Partners, LLC
4. Atlanta Centennial House	Atlanta Centennial House, L.L.C.
6. 123 Luckie Street	Center City Housing Corp.

## SERIES 2005 PROJECTS

Project	Type	Developer
55 Allen Plaza	Office/Retail/Parking	Barry Real Estate
Centennial East Condos	Condos/Retail/Parking	Integral Real Estate Group
Glenn Boutique Hotel	Hotel/Retail	Legacy Property Group
Historic Westside Village	Condo/Retail/Parking	Trammell Crow Company/H.J. Russell & Co.
Marietta Place	Retail	Legacy Property Group
Park Pavilion Hotel	Hotel/Retail/Parking	Legacy Property Group
Wincoff Hotel	Hotel/Retail	RD Management
World of Coca Cola/ Alexander Street Water Main Extension	Retail/Parking/Public Infrastructure	Coca Cola Company
Centennial Olympic Park Parking Deck	Public Parking	City of Atlanta and Fulton County Recreation Authority
Neighborhood Projects	Various	Various

## SERIES 2008 PROJECTS

### Developer Projects

<u>Project</u>	<u>Type</u>	<u>Developer</u>
Castleberry Point	Residential/Retail/Parking	Castleberry Point Development, LLC, an affiliate of Miller Gallman Developers, L.L.C.
45 Allen Plaza	Hotel/Residential/Retail/Parking	45 Allen Plaza Development, LLC, an affiliate of Barry Real Estate Companies, Inc.
Northside Plaza	Residential/Parking/Retail	Northside Redevelopment, LLC, an affiliate of Harold A. Dawson Co., Inc.
Historic Westside Village; Retail Phase Development	Parking/Retail	Atlanta Westside Village Partners, II, LLC, an affiliate of Russell New Urban Development, LLC
Technology Enterprise Park: Phase I	Bioscience Office Space/ Parking	TUFF TEPB LLC, an affiliate of The University Financing Foundation, Inc., and VLP 3, LLC

### Public Purpose Projects

<u>Project</u>	<u>Type</u>
Andrew Young Tribute in Walton Spring Park	.18 acre garden park redevelopment and streetscaping
Downtown Traffic Signal Upgrades	47 intersections
Fairlie Poplar Streetscape Phase III — Utility relocation	Utility relocation and coordination
West Peachtree Place Two Way Conversion	Three intersections

Cultural Facilities Project

<u>Project</u>	<u>Type</u>
Center for Civil and Human Rights	Museum

Neighborhood Projects

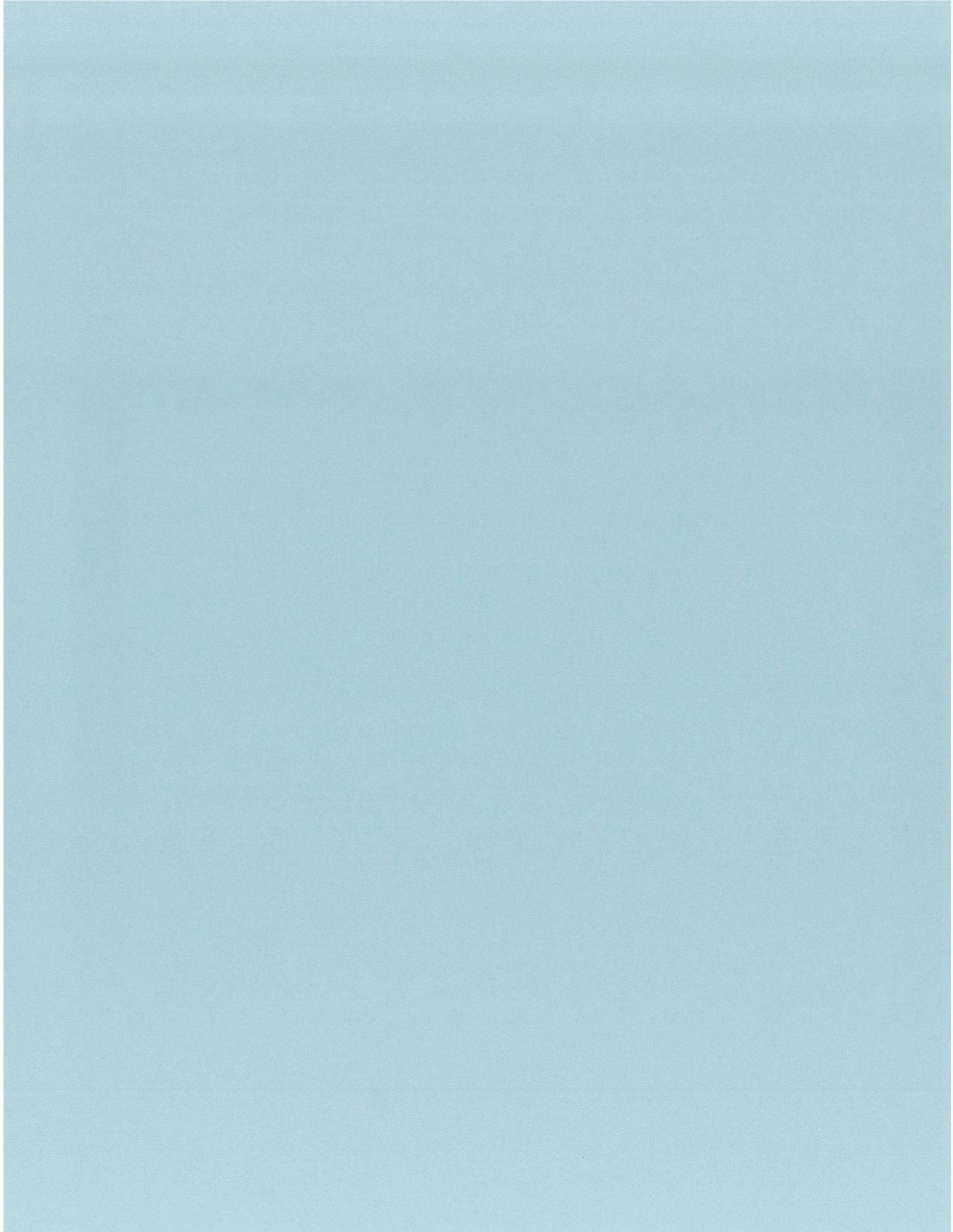
Those redevelopment projects approved by the Redevelopment Agent and the Westside TAD Neighborhood Advisory Board pursuant to the Redevelopment Agent's policies and procedures. The projects are required to be located within the Westside TAD Neighborhood Area (as defined by the City of Atlanta).

**GULCH AREA**

**[INSERT LISTING OF ALL APPLICABLE TAX PARCEL ID NUMBERS]**

**Summary report:**  
**Litéra® Change-Pro TDC 7.5.0.235 Document comparison done on**  
**10/21/2018 9:13:50 PM**

<b>Style name:</b> Firm Standard	
<b>Intelligent Table Comparison:</b> Active	
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<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>7</b>



**AMENDED AND RESTATED  
CONTINUING COVENANTS AGREEMENT**

**between**

**CITY OF ATLANTA, GEORGIA**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

dated as of  
[\_\_\_\_\_] 1, 2018

relating to:

City of Atlanta, Georgia  
Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2001-R

City of Atlanta, Georgia  
Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2005A-R

City of Atlanta, Georgia  
Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2005B-R

City of Atlanta, Georgia  
Tax Allocation Variable Rate Bonds  
(Westside Project), Series 2008-R

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## AMENDED AND RESTATED CONTINUING COVENANTS AGREEMENT

This Amended and Restated Continuing Covenants Agreement, dated as of [\_\_\_\_\_] 1, 2018 (this "**Agreement**"), amends and restates in its entirety the Continuing Covenants Agreement, dated as of September 1, 2011 (the "**Original Agreement**"), and is between the City of Atlanta, Georgia, a municipal corporation of the State of Georgia (the "**City**") and Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, with offices located in Atlanta, Georgia, (the "**Majority Holder**" and, together with each subsequent owner from time to time of the Bonds (as hereinafter defined) pursuant to Section 9.05 hereof, a "**Beneficial Owner**");

### PREAMBLES

**WHEREAS**, in order to encourage the development of an economically and socially depressed area in the City, the City Council by resolution adopted on July 6, 1998, and signed by the Mayor on July 13, 1998, as amended on October 19, 1998, and signed by the Mayor on October 27, 1998, among other matters, (i) adopted the Westside Redevelopment Plan and Tax Allocation Bond District (Tax Allocation District Number I, As Amended - Atlanta/Westside), pursuant to the authority granted the City under the Constitution and the laws of the State of Georgia, including particularly Chapter 44 of Title 36 of the Official Code of Georgia Annotated, known as the "Redevelopment Powers Law," as amended (the "**Act**"), (ii) created The Westside Tax Allocation Bond District Number I, As Amended - Atlanta/Westside (the "**Westside TAD**"), and (iii) authorized the pledge of positive ad valorem tax allocation increments derived from the Westside TAD for the payment or as security for the payment of tax allocation bonds;

**WHEREAS**, pursuant to the Act, the City is authorized to finance certain Redevelopment Costs (as defined in the Act), including without limitation, (i) clearing, grading and otherwise preparing the property within the Westside TAD for redevelopment, (ii) environmental remediation of such property, (iii) design, construction and installation of utilities such as water, sewer, storm drainage, electric, gas and telecommunications, (iv) design, construction and installation of streets, sidewalks, bikeways, curbs, gutters and other public works, (v) design and construction of parking facilities and (vi) any other facilities and improvements located in or otherwise related to the Westside TAD that are eligible to be financed or refinanced as Redevelopment Costs under the Act (collectively, the "**Projects**");

**WHEREAS**, the City financed a portion of the costs of the hereinafter described Series 2001 Projects through the issuance of its Tax Allocation Variable Rate Bonds (Westside Project), Series 2001 in the original aggregate principal amount of \$14,995,000, of which \$[\_\_\_\_\_] is Outstanding;

**WHEREAS**, the City financed a portion of the costs of the hereinafter described Series 2005 Projects and made certain payments to the Atlanta Board of Education by issuing its Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A in the aggregate principal amount of \$72,350,000, of which \$[\_\_\_\_\_] is Outstanding and its Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B in the aggregate principal amount of \$10,215,000, of which \$[\_\_\_\_\_] is Outstanding;

**WHEREAS**, the City financed certain Redevelopment Costs by issuing its Subordinate Lien Tax Allocation Variable Rate Bonds (Westside Project), Series 2008 in the aggregate principal amount of \$63,760,000, of which \$[\_\_\_\_\_] is Outstanding relating to 45 Allen Plaza, Castleberry Point, Northside Plaza, Historic Westside Village: Retail Phase Development, Technology Enterprise Park: Phase I, the Center for Civil and Human Rights, certain public projects and certain neighborhood projects all within the Westside TAD and more particularly described in [Schedule I] to the Indenture;

**WHEREAS**, the Series 2008 Bonds have acceded to parity status and are equally and ratably secured hereunder and under the Indenture with the Series 2001 Bonds, the Series 2005 Bonds and any Additional Bonds issued thereunder, without preference, priority or distinction of any Bonds over any other Bonds, except that as additional security for the Series 2005B Bonds, the City pledged the World of Coca-Cola Tax Allocation Increments as provided in the Indenture;

**WHEREAS**, the Majority Holder purchased the Bonds pursuant to the Original Agreement;

**WHEREAS**, the City has requested that the Majority Holder consent to amend the Original Indenture in order to release from the lien of Trust Estate established thereunder the positive ad valorem tax increments generated within the Gulch Area of the Westside TAD from the security pledged to the payment of the Payment Obligations, and to establish an additional debt service reserve of \$5,000,000 to be held hereunder to further secure payment of the Payment Obligations;

**WHEREAS**, as an inducement to the Majority Holder to give such consent and to continue to own the Bonds, the City now desires to enter into this Agreement to amend and restate the Original Agreement and to set forth certain representations, warranties, covenants and agreements regarding the City;

**WHEREAS**, the City has entered into a Tax Custody and Depository Agreement, dated as of \_\_\_\_\_, 2018 (the "**Tax Custody Agreement**") with Wells Fargo Bank, National Association, serving in the capacity as "**Tax Custodian**", pursuant to which the City will deposit all Tax Allocation Increments generated within the Westside TAD, as and when received, for deposit into the Special Fund (as hereinafter defined) created thereunder, and the Tax Custodian will allocate and pay a portion of the Tax Allocation Increments generated within the Westside TAD (excluding the Gulch Area) into the Tax Increment Fund created hereunder; and

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter appearing, and to induce the Majority Holder to continue to own the Bonds, the City does hereby covenant and agree with the Majority Holder as follows:

## **ARTICLE I. DEFINITIONS**

### **Section 1.01 Definitions.**

The terms defined in this Article I have, for all purposes of this Agreement, the meanings specified hereinabove or in this Article, unless defined elsewhere herein or the context clearly requires otherwise.

**"Act"** means Chapter 44 of Title 36 of the Official Code of Georgia Annotated, known as the "Redevelopment Powers Law," as amended. Reference herein to any specific provision of the Act shall be deemed to include any successor provision of such provision of the Act.

**"Additional Bonds"** has the meaning provided in the Indenture.

**"Administrative Costs"** means all costs and expenses to be paid by or on behalf of the City in connection with any Related Document, including, but without limitation, rebate analyst fees, audit fees, rating agency fees, financial advisory fees, trustee fees and attorneys fees.

**"Agreement"** means this Amended and Restated Continuing Covenants Agreement, including the Exhibits attached to this Agreement which are incorporated herein by this reference, as amended or supplemented from time to time in accordance with the terms of this Agreement.

**"Applicable Spread"** has the meaning assigned to such term in the Indenture.

**"Bankruptcy Code"** means the Bankruptcy Reform Act of 1978, as amended (11 U.S.C. Section 101 et seq., as amended).

**"Base Rate"** has the meaning assigned to such term in the Indenture.

**"Bond Counsel"** means Hunton Andrews Kurth LLP, Atlanta, Georgia, or such other firm of recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of public obligations and which is acceptable to the Majority Holder.

**"Bond Documents"** means, collectively, the Indenture, the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds and the Calculation Agent Agreement, as the same may be amended, modified or supplemented from time to time in accordance with their respective terms.

**"Bonds"** means the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds and any Additional Bonds.

**"Business Day"** means any day other than a Saturday, Sunday or legal holiday, on which commercial banks in Atlanta, Georgia, Charlotte, North Carolina, and Winston-Salem, North Carolina are open for business.

**"Calculation Agent"** means Wells Fargo Bank, National Association and any successors thereto.

**"Calculation Agent Agreement"** means any Calculation Agent Agreement entered into between the City and the Calculation Agent, from time to time, as the same may be amended or supplemented.

**"Chief Financial Officer"** means the chief financial officer of the City and the head of the City's Department of Finance.

**"Chief Operating Officer"** means the individual presently holding the office of Mayor of the City and any successor who might hereafter hold such office, and any individual, body, or authority to whom or which may hereafter be delegated by law the duties, powers, authority, obligations, or liabilities of such office.

**"City"** means City of Atlanta, Georgia, a municipal corporation of the State of Georgia.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the regulations, rulings and proclamations promulgated and proposed thereunder.

**"Collateral"** means, collectively, the Trust Estate as defined in the Indenture, Tax Allocation Increments paid to or retained by the City, the Tax Increment Fund, the Debt Service Reserve Fund, the Supplemental Reserve Fund, the Special Reserve Fund and the moneys and investments deposited therein, and proceeds thereof pledged to the Majority Holder pursuant to this Agreement.

**"Consistent Basis"** means, in reference to the application of Generally Accepted Accounting Principles applicable to governmental entities, that the accounting principles observed in the period

referred to are comparable in all material respects to those applied in the preceding period, except as to any changes consented to by the Majority Holder.

**"Debt Service"** means, for any period, the aggregate principal (whether at maturity or pursuant to required redemption) and interest payments on Bonds, including with respect to the provisions of Section 6.01 hereof, any proposed Additional Bonds.

**"Debt Service Coverage Ratio"** means, for any Fiscal Year, the ratio obtained by dividing (a) the sum of (i) Tax Allocation Increments actually collected during such Fiscal Year plus (ii) interest received during such Fiscal Year on the investment of the amounts held in the Debt Service Reserve Fund plus (iii) in any Fiscal Year in which amounts held in the Debt Service Reserve Fund may be applied to the payment of Bonds, the amount held in the Debt Service Reserve Fund and so applied, by (b) the Maximum Annual Debt Service on the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds, and any Additional Bonds, including with respect to the provisions of Section 6.01(ii)(b) hereof, any proposed Additional Bonds. For any prospective Debt Service Coverage Ratio, Tax Allocation Increments and interest received shall mean those Tax Allocation Increments and interest earnings projected by the City and the Administrative Costs shall mean the estimated Administrative Costs provided by the Majority Holder or projected by the City.

**"Debt Service Reserve Fund"** means the Debt Service Reserve Fund created in Section 5.05 of this Agreement.

**"Debt Service Reserve Requirement"** means the least of (i) ten percent (10%) of the original face amount of the Bonds Outstanding, (ii) one hundred twenty-five percent (125%) of the average annual debt service on the Bonds Outstanding, or (iii) the maximum annual debt service on the Bonds Outstanding, in any bond year.

**"Derivative Agreement"** means an interest rate swap, cap, collar, floor, forward, option, put, call or other agreement, arrangement or security however denominated, entered into in order to hedge interest rate fluctuations on all or a portion of any Indebtedness for Money Borrowed or to change the payments to be made by the City with respect to any Indebtedness for Money Borrowed from fixed to variable or from variable to fixed with the goal of achieving lower interest costs.

**"Determination of Taxability"** shall have the meaning assigned to such term in the Indenture.

**"Dollars"** and "\$" means the lawful currency of the United States of America.

**"Event of Default"** shall have the meaning specified in Article VIII of this Agreement.

**"Excess Increments"** means moneys in the Tax Increment Fund transferred to the Excess Increment Fund in accordance with Section 5.04 of this Agreement.

**"Excess Increment Fund"** means the Excess Increment Fund created in Section 5.04(b) of this Agreement.

**"Fiscal Year"** means the twelve-month period commencing on July 1 of each year and ending on June 30 of the next succeeding year.

**"Fulton County"** means Fulton County, Georgia, a body politic and corporate and political subdivision of the State of Georgia.

**"Generally Accepted Accounting Principles"** means those principles of accounting set forth in pronouncements of the Governmental Accounting Standards Board and its predecessors or

pronouncements of the American Institute of Certified Public Accountants or those principles of accounting which have other substantial authoritative support and are applicable in the circumstances as of the date of application.

**"Gulch Area"** has the meaning set forth in the Indenture.

**"Historic Debt Service Coverage Ratio"** means, for the most recently completed Fiscal Year, the ratio obtained by dividing (a) the sum of (i) Tax Allocation Increments actually collected during such Fiscal Year plus (ii) interest actually received during such Fiscal Year on the investment of the amounts held in the Debt Service Reserve Fund plus (iii) in any Fiscal Year in which amounts held in the Debt Service Reserve Fund were applied to the payment of Bonds, the amount held in the Debt Service Reserve Fund and so applied, by (b) the sum of (i) the Debt Service actually paid or due during the most recently completed Fiscal Year on the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds, and any Additional Bonds plus (ii) the Administrative Costs actually paid or due during such Fiscal Year.

**"Indebtedness for Money Borrowed"** means all indebtedness in respect of money borrowed, including (without limitation) the deferred purchase price of any property or asset or indebtedness evidenced by a promissory note, bond, guaranty or similar written obligation for the payment of money (including but not limited to, conditional sales or similar title retention agreements).

**"Indenture"** means the Amended and Restated Indenture of Trust, dated as of [\_\_\_\_\_] 1, 2018, between the City and the Trustee, amending and restating the Original Indenture, as the same may be amended or supplemented from time to time.

**"Long Term Rate"** shall have the meaning assigned to such term in the Indenture.

**"Mandatory Purchase Date"** shall have the meaning assigned to such term in the Indenture.

**"Maximum Annual Debt Service"** means the greatest amount of Debt Service that will come due in any Fiscal Year plus the estimated Administrative Costs that will be payable in that Fiscal Year based on the schedule of fees in effect on the date of calculation, provided that, for purposes of determining Maximum Annual Debt Service, debt service due in the Fiscal Years ended June 30, 2024 and June 30, 2038 shall be excluded, and provided, further that the maximum amount of principal due in any Fiscal Year shall be determined in the case of the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds by the redemption requirements of Section 5.09(a), (b) and (c) of this Agreement and in the case of any Additional Bonds by the principal amount of such Additional Bonds payable, whether at maturity or pursuant to required redemption, in any Fiscal Year. Interest expense for the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds, and any Additional Bonds issued as variable rate bonds shall be based on an interest rate equal to the greater of: (i) [3.27]% per annum or (ii) the then current ten-year average SIFMA Index, unless the interest rate on the Series 2001 Bonds, the 2005 Series Bonds, the Series 2008 Bonds and any such Additional Bonds exceeds the greater of 3.27% or the then current ten-year average SIFMA Index in which event interest expense shall be based on such higher rate. Interest expense on Additional Bonds issued as fixed rate bonds shall be based on the interest rate on such bonds.

**"Original Indenture"** means the Indenture of Trust, dated as of December 1, 2001, between the City and the Trustee, as amended and supplemented to the date hereof.

**"Outstanding"** when used with reference to the Bonds, shall have the meaning set forth in the Indenture.

**"Owner"** shall have the meaning assigned to the term "Holder" as set forth in the Indenture.

**"Participant"** means any bank or financial institution to which the Majority Holder or any Participant has granted a participation in this Agreement pursuant to a Participation Agreement.

**"Participation Agreement"** means any Participation Agreement, between the Majority Holder and any other Person purchasing participations in this Agreement and named therein, relating to this Agreement and the Bonds.

**"Payment Obligations"** means all obligations of the City to pay any interest, fee, expense or other amount, or to perform any covenant or agreement to pay, reimburse or indemnify the Majority Holder, arising under this Agreement or in relation to any Related Document.

**"Person"** means an individual, partnership, corporation, limited liability company, trust, unincorporated organization, association, joint venture or a government or agency or municipal corporation or instrumentality thereof.

**"Projects"** means the (i) clearing, grading and otherwise preparing property within the Westside TAD for redevelopment, (ii) environmental remediation of the property within the Westside TAD, (iii) design, construction and installation of utilities such as water, sewer, storm drainage, electric, gas and telecommunications, (iv) design, construction and installation of streets, sidewalks, bikeways, curbs, gutters and other public works, (v) design and construction of parking facilities and (vi) any other facilities and improvements located in or otherwise related to the Westside TAD and any other cost related to the Westside TAD that are eligible to be financed or refinanced as Redevelopment Costs under the Act.

**"Purchase Price"** means the redemption price of those Bonds redeemed in accordance with Article IV of the Indenture.

**"Redevelopment Costs"** means Redevelopment Costs, as defined in the Act.

**"Reissuance Closing Date"** means [\_\_\_\_\_], 2018.

**"Related Documents"** means the Bond Documents, any Derivative Agreement, and any other agreement or instrument relating thereto.

**"School Board"** means the Atlanta Board of Education.

**"Series 2001 Bonds"** means the \$14,995,000 in original aggregate principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2001-R reissued pursuant to the Indenture.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds and the Series 2005B Bonds.

**"Series 2005A Bonds"** means the \$72,350,000 in original aggregate principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A-R reissued pursuant to the Indenture.

**"Series 2005B Bonds"** means the \$10,215,000 in original aggregate principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B-R reissued pursuant to the Indenture.

**"Series 2008 Bonds"** means the \$63,760,000 in original aggregate principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2008-R reissued pursuant to the Indenture.

**"Series 2001 Projects"** means the Projects described under the heading "Description of Series 2001 Projects" on Exhibit A attached hereto.

**"Series 2005 Projects"** means the Projects described under the headings "Description of Series 2005 Projects" and "Other Uses of Series 2005 Bond Proceeds" on Exhibit A attached hereto.

**"Series 2008 Projects"** means the Projects described under the heading "Description of Series 2008 Projects" on Exhibit A attached hereto.

**"Special Fund"** shall have the meaning set forth in Section 5.04(a) hereof.

**"Special Reserve Fund"** means the Special Reserve Fund created in Section 5.04(c) of this Agreement.

**"Special Reserve Requirement"** shall have the meaning set forth in Section 5.04(c) hereof.

**"State"** means the State of Georgia.

**"Supplemental Reserve Fund"** means the Supplemental Reserve Fund created in Section 5.04(b) of this Agreement

**"Taxable Rate"** means an interest rate per annum at all times equal to the product of the Long Term Rate then in effect multiplied by the Taxable Rate Factor.

**"Taxable Rate Factor"** shall have the meaning assigned to such term in the Indenture.

**"Tax Allocation Increments"** means (i) the positive ad valorem tax increments, and (ii) the World of Coca-Cola Tax Allocation Increments, as calculated pursuant to O.C.G.A. § 36-44-3(14), generated within the Westside TAD (excluding the Gulch Area) from ad valorem property taxes levied by the City, Fulton County and the School Board.

**"Tax Custody Agreement"** shall have the meaning assigned to such term in the recitals hereto.

**"Tax Custodian"** shall have the meaning assigned to such term in the recitals hereto.

**"Tax Increment Fund"** means the Tax Increment Fund created in Section 5.04(a) of this Agreement.

**"Termination Date"** means the earliest of (1) the date on which the principal amount of and interest on the Bonds subject to this Agreement shall have been paid in full, or (2) the close of business on the second Business Day following a Conversion Date after which Wells Fargo Bank, National Association is no longer a holder of the Bonds.

**"Trustee"** means The Bank of New York Mellon, a national banking association organized and existing under the laws of the United States of America, and any Person or group of Persons at the time serving as Trustee under the Indenture.

**"Westside TAD"** means The Westside Redevelopment Area and Tax Allocation Bond District (Tax Allocation District Number 1, As Amended - Atlanta/Westside) created by City Council by a resolution, adopted on July 6, 1998, and signed by the Mayor on July 13, 1998, as amended on October 19, 1998, and signed by the Mayor on October 27, 1998.

**"World of Coca-Cola Tax Allocation Increments"** means the tax allocation increments derived from ad valorem property tax on personal property located, or to be located, on an approximate 11-acre tract of land on Centennial Olympic Park Drive and known as Fulton County Tax Parcel ID No. 14-0079-0010-147-4.

#### Section 1.02 **Construction.**

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and references to the singular include the plural.

#### Section 1.03 **Accounting Matters.**

Unless otherwise specified herein, all accounting determinations under this Agreement and all computations utilized by the City in complying with the covenants contained herein shall be made, all accounting terms used herein shall be interpreted, and all financial statements requested to be delivered under this Agreement shall be prepared, in accordance with Generally Accepted Accounting Principles applied on a Consistent Basis applicable to governmental entities, except, in the case of such financial statements, for departures from Generally Accepted Accounting Principles applicable to governmental entities that may from time to time be approved in writing by the Majority Holder and the independent certified public accountants who are at the time, in accordance with this Agreement, reporting on the City's Comprehensive Annual Financial Report.

If at any time any change in Generally Accepted Accounting Principles would affect the computation of any covenant (including the computation of any financial covenant) and/or pricing grid set forth in this Agreement or any other Related Document, the City and the Majority Holder shall negotiate in good faith to amend such covenant and/or pricing grid to preserve the original intent in light of such change; provided, that, until so amended, (i) each such covenant and/or pricing grid shall continue to be computed in accordance with the application of Generally Accepted Accounting Principles prior to such change and (ii) the City shall provide to the Majority Holder simultaneously with the delivery of each set of financial statements referred to in Section 5.06 a written reconciliation in form and substance reasonably satisfactory to the Majority Holder, between calculations of such covenant and/or pricing grid made before and after giving effect to such change in Generally Accepted Accounting Principles.

## **ARTICLE II. REPRESENTATIONS AND WARRANTIES OF THE CITY**

The City represents and warrants for the benefit of the Majority Holder (which representations and warranties shall survive the delivery of the documents mentioned herein) that:

#### Section 2.01 **Organization.**

The City is a municipal corporation duly created, existing and in good standing under the laws of the State of Georgia.

#### Section 2.02 **Power and Authority.**

The City is duly authorized under all applicable provisions of law to execute, deliver and perform this Agreement and the Related Documents to which it is a party and to incur its obligations

provided for herein and therein, and all corporate action on its part required for the lawful execution, delivery and performance of this Agreement has been duly taken; and this Agreement and the Related Documents, upon the due execution and delivery of this Agreement will be the valid and binding obligation of the City enforceable in accordance with their respective terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and to general principles of equity. Neither the execution of this Agreement nor the fulfillment of or compliance with its provisions and terms, will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a violation of or default under the Charter of the City or any other organizational documents of the City, or any agreement or instrument to which the City is now a party or to the best knowledge of the City any applicable law, regulation, judgment, writ, order or decree to which the City is subject.

#### **Section 2.03 Litigation.**

There are no pending or, to the best of its knowledge, threatened actions, suits, proceedings, inquiries or investigations at law or in equity before or by any court, arbitrator governmental or administrative body or agency which may materially adversely affect the ability of the City to perform its obligations under this Agreement.

#### **Section 2.04 Contract or Restriction Affecting the City.**

Other than this Agreement and the Related Documents, the City is not a party to nor is it bound by any contract or agreement or subject to any charter or other corporate restrictions, or subject to the renegotiation of any contract, which does or may materially and adversely affect the ability of the City to perform its obligations under this Agreement.

#### **Section 2.05 Governmental Authority.**

The City has received or will receive the written approval of all federal, state, and foreign governmental authorities, if any, necessary to carry out the terms of this Agreement.

#### **Section 2.06 No Untrue Statement.**

This Agreement or any reports, schedules, certificates, information, exhibits, agreements and instruments heretofore or simultaneously with the execution of this Agreement delivered to the Majority Holder or the Trustee by the City in connection with the negotiation of this Agreement and the Majority Holder's direct purchase of the Bonds is true and correct in all material respects. There is no material fact which is known by the City that the City has not disclosed to the Majority Holder which could have a materially adverse effect on the Series 2001 Projects, the Series 2005 Projects or the Series 2008 Projects, financial or otherwise.

#### **Section 2.07 Westside TAD.**

The Westside TAD has been duly created by the City pursuant to the Act, exists as a duly constituted "tax allocation district" under the Act and has all of the powers of a "tax allocation district" under the Act. The Act authorizes the City to issue its "tax allocation bonds" and to pledge for the payment of such bonds the positive tax allocation increments derived from the Westside TAD.

#### **Section 2.08 Property.**

The property on which the Series 2001 Projects, the Series 2005 Projects and the Series 2008 Projects are or will be located complies or will comply in all respects with presently existing or

amended zoning and other land use restrictions affecting the Series 2001 Projects, the 2005 Projects and the Series 2008 Projects, respectively.

**Section 2.09 No Material Adverse Change.**

No event has occurred, and no condition exists that singly or when aggregated with all such events or conditions, is likely to have a materially adverse effect on the City and its ability to perform its obligations under this Agreement.

**Section 2.10 Reserved.**

**Section 2.11 Incorporation by Reference.**

The representations and warranties of the City set forth in the Related Documents (which representations and warranties are incorporated herein by reference) are true and correct and the Majority Holder is entitled to rely on such representations and warranties as if made directly to the Majority Holder and with respect to the Majority Holder.

**Section 2.12 Enforceability.**

Assuming the due authorization, execution, delivery and performance thereof by the other parties thereto, the Related Documents to which the City is or will be a party are, or, upon execution and delivery thereof will be, the legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as limited by general principles of equity and by bankruptcy, insolvency, reorganization or other similar laws of general application affecting the enforcement of creditors' rights.

**Section 2.13 First Priority Liens.**

This Agreement and the Indenture will create valid, perfected, first priority security interests in the Collateral, in each case enforceable against the City and securing the payment of all obligations purported to be secured thereby.

**Section 2.14 Complete Agreement.**

The City has fully negotiated the terms and provisions of this Agreement and the Related Documents with the Majority Holder and the other parties to such Related Documents, and this Agreement and the Related Documents completely and accurately document the agreements between the parties as set forth herein and therein. There are no written or oral agreements between the City and the Majority Holder which supplement, amend or conflict with the terms of this Agreement or any of the Related Documents. The City intends the literal words of this Agreement and the Related Documents, and permitted written amendments hereto and thereto, to govern and control in any circumstance relating to this Agreement, or the Related Documents, without regard to any prior negotiations, drafts, oral agreements, practices, standards or other extrinsic communications or facts, none of which shall have any significance or evidentiary effect for any purpose whatsoever.

**Section 2.15 Tax Allocation Increment Base.**

The tax allocation increment base of the Westside TAD, as of the date hereof, is \$[270,693,404], provided, however, that if the tax allocation increment base is subsequently adjusted, the tax allocation increment base shall be such adjusted amount.

**Section 2.16 Identification of Property.**

As required by the Act, the City has caused the Atlanta-Fulton County Joint Board of Tax Assessors to identify upon the tax digests of the City, Fulton County, and the School Board those parcels of property that are within the Westside TAD and, for purposes of this Agreement, the City shall identify each parcel constituting the Gulch Area by reference to its specific tax parcel identification numbers as set forth in Exhibit E attached to the Indenture.

**Section 2.17 Tax Rate.**

The Majority Holder acknowledges that it did not rely upon the prior provisions of Section 36-44-15 of the Act (relating to roll back of ad valorem millage rates) in making its credit decision to purchase the Bonds.

**Section 2.18 Completion of Series 2001 Projects, Series 2005 Projects and Series 2008 Projects.**

All of the Series 2001 Projects, the Series 2005 Projects and the Series 2008 Projects have been completed to the satisfaction of the City.

**ARTICLE III.  
FEES, EXPENSES AND OTHER PAYMENTS**

**Section 3.01 Payments under this Agreement.**

Subject to Section 3.10 below, the City shall pay to the Majority Holder:

- (a) On demand, any and all reasonable expenses incurred by the Majority Holder in enforcing any rights under this Agreement; and
- (b) On demand, all charges, commissions, costs and expenses set forth in Section 3.02 of this Agreement.

**Section 3.02 Fees, Charges and Expenses.**

Subject to Section 3.10 below, the City hereby agrees to pay or cause to be paid to the Majority Holder the following fees, charges and expenses:

(a) The City agrees to pay the reasonable fees and expenses of counsel to the Majority Holder relating to the preparation, execution and delivery this Agreement, the Indenture and the other Related Documents and any and all other agreements and transactions contemplated hereby and thereby, upon receipt by the City of a written statement of such fees and expenses.

(b) The City agrees to pay any amounts payable to the Majority Holder under this Agreement or payable by the City to the Majority Holder under any other Related Document, together with all other commercially reasonable charges and expenses that the Majority Holder pays or incurs relative to this Agreement, the Indenture or any of the other Related Documents, and all reasonable expenses incurred by the Majority Holder including reasonable attorneys' fees in connection with (i) administration of this Agreement, or (ii) enforcement of any rights under this Agreement, the Indenture or with respect to the City under any of the other Related Documents (including any amendments hereto or thereto or consents or waivers hereunder or thereunder) within the time specified hereunder or under such Related Document or, if not specified, within 10 days of receipt by the City of a written statement of any such amounts. Such enforcement shall include all amounts expended, advanced or incurred by the Majority Holder to collect or satisfy any obligation of

the City under this Agreement, including, without limitation, all court costs, reasonable attorneys' fees, fees of auditors and accountants and investigation expenses in connection with any such matters.

(c) In the event the Bonds are redeemed in whole or in part, or the interest rate on the Bonds is converted to a rate other than the Long Term Rate, prior to the first anniversary of the Reissuance Closing Date, the City agrees to pay to the Majority Holder a termination fee equal to the product of (i) the Applicable Spread in effect on the date of such redemption or conversion, (ii) the principal amount of Bonds so redeemed or converted and (iii) a fraction, the numerator of which is the number of days from and including the date of redemption or conversion to and including such first anniversary, and denominator of which is 365.

(d) The City agrees to pay to the Majority Holder an amendment fee for each amendment of this Agreement or any Related Document in a minimum amount of \$2,500 plus associated legal expenses.

#### **Section 3.03 Increased Costs Due to Change in Law.**

Subject to Section 3.10 below, in the event of any change in any existing or future law, regulation, ruling or other interpretation having influence over the Majority Holder which shall impose, modify or make applicable any reserve, special deposit, capital requirement, assessment or similar requirement with respect to the obligations hereunder, and the result thereof shall be to increase the cost (including a reasonable allocation of resources) or decrease the yield to the Majority Holder, then, upon demand by the Majority Holder, the City shall immediately pay to the Majority Holder, from time to time as specified by the Majority Holder, additional amounts which shall be sufficient to compensate the Majority Holder for such increased cost or decreased yield. A statement of charges submitted by the Majority Holder shall be conclusive, absent manifest error, as to the amount owed.

#### **Section 3.04 Computation.**

All payments of amounts payable under this Agreement payable to the Majority Holder shall be computed on the per annum basis of the actual number of days elapsed in a year of 365 or 366 day year, as applicable.

#### **Section 3.05 Payment Procedure.**

All payments made by or on behalf of the City under this Agreement shall be made to the Majority Holder in lawful currency of the United States of America and in immediately available funds at the Majority Holder's office in Charlotte, North Carolina before 12:00 Noon (Winston-Salem, North Carolina time) on the date when due.

#### **Section 3.06 Business Days.**

If the date for any payment under this Agreement falls on a day which is not a Business Day, then for all purposes of this Agreement the same shall be deemed to have fallen on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payments of interest or commission, as the case may be.

Section 3.07 **[Reserved]**.

Section 3.08 **Obligation Absolute.**

Subject to Section 3.10, the obligations of the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances:

- (a) Any lack of validity or enforceability of, the Bonds, any of the other Bond Documents, or any other agreement or instrument related thereto;
- (b) Any amendment or waiver of or any consent to departure from the terms of, the Bonds, any of the other Related Documents, or any other agreement or instrument related thereto;
- (c) The existence of any claim, setoff, defense or other right which either the City may have at any time against the Trustee (or any Person for whom the Trustee may be acting), the Majority Holder or any other Person, whether in connection with this Agreement, the Bond Documents, the Series 2001 Projects, the Series 2005 Projects, the Series 2008 Projects or any unrelated transaction;
- (d) The surrender or impairment of any security for the performance or observance of any of the terms of this Agreement.
- (e) Any other circumstances or happening whatsoever whether or not similar to any of the foregoing.

Section 3.09 **Maintenance of Accounts.**

The Majority Holder shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the City and the amounts payable and paid from time to time under this Agreement. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the City therein recorded. The failure to record any such amount shall not, however, limit or otherwise affect the obligations of the City under this Agreement to repay all amounts owed under this Agreement, together with all interest accrued thereon as provided in this Article III.

Section 3.10 **Limited Obligation.**

Notwithstanding any other provision contained in this Agreement and under Related Documents, the Payment Obligations of the City under this Agreement and the Related Documents are limited obligations of the City secured from Tax Allocation Increments and any investment income on the funds held under the Indenture and this Agreement. The Payment Obligations do not and will not constitute a debt or general obligation of the City or a pledge of the faith and credit and taxing power of the City.

Section 3.11 **Mandatory Tender on Mandatory Purchase Date.**

Pursuant to the Indenture, the Bonds are subject to mandatory tender for purchase at the Purchase Price on each Mandatory Purchase Date. With respect to any principal amount of Bonds that the City fails to so purchase on the Mandatory Purchase Date, so long as no Event of Default has occurred and is continuing, such Bonds shall be redeemed by the City (i) in accordance with the redemption dates and amounts set forth in Section 5.09 hereof, or (ii) in twelve equal quarterly payments, with the first such payment occurring 180 days after the Mandatory Purchase Date,

whichever results in the Bonds being redeemed earlier. The interest rate on any such Bonds that the City fails to purchase on the Mandatory Purchase Date shall be a rate equal to the Base Rate for the first 180 days after such Mandatory Purchase Date, and thereafter, a rate equal to the Base Rate plus 1.00%.

**Section 3.12 Taxable Rate.**

With respect to Bonds accruing interest at the Long Term Rate, from and after the occurrence of a Determination of Taxability, interest on such Bonds shall accrue at the Taxable Rate.

**ARTICLE IV.  
PURCHASE OF BONDS**

**Section 4.01 Purchase of Bonds by Majority Holder.**

The Majority Holder hereby agrees to continue to hold the Bonds subject to fulfillment of the conditions precedent set forth in Article VII hereof at or before the Reissuance Closing Date, and upon the basis of the representations, warranties and covenants set forth herein.

**ARTICLE V.  
AFFIRMATIVE COVENANTS**

Until all the obligations of the City under this Agreement to be performed and paid shall have been performed and paid in full, the City covenants and agrees that, unless the Majority Holder consents otherwise in writing:

**Section 5.01 Repayment of Obligations.**

Subject to Section 3.10 hereof, the City will promptly repay the payment obligations of the City under this Agreement and under the Related Documents when due, according to the terms of this Agreement and the Related Documents.

**Section 5.02 Performance Under the Continuing Covenants Agreement.**

The City will perform all obligations required to be performed by it under the terms of this Agreement and the Related Documents, subject to any applicable notice and cure provisions contained therein.

**Section 5.03 Tax Information.**

The City shall deliver to the Majority Holder promptly upon receipt thereof a copy of the annual report of the Atlanta-Fulton County Joint Board of Tax Assessors required by Section 36-44-IO(E) of the Act as to the current taxable value of property within the Westside TAD and the tax allocation increment base, including a breakdown of the Westside TAD with and without the Gulch Area.

**Section 5.04 Creation, Maintenance and Use of Funds.**

(a) As provided by Section 36-44-11 of the Act, the City has heretofore established a special fund (the "**Special Fund**") to be held by Wells Fargo Bank, National Association, in its capacity as Tax Custodian under the Tax Custody Agreement, into which the City shall deposit or cause to be deposited all Tax Allocation Increments. Pursuant to Section 2(a) of the Tax Custody Agreement, moneys shall be deposited into the tax increment fund held by the Majority Holder hereunder (the "**Tax Increment Fund**") on the [\_\_\_] day of each month. As long as this Agreement is in effect, the moneys in the Tax Increment Fund, including the earnings thereon, shall be used as follows (a)

World of Coca-Cola Tax Allocation Increments on deposit in the Tax Increment Fund shall be used to pay Payment Obligations and Administrative Costs solely related to the Series 2005B Bonds for the current fiscal year prior to the application of other Tax Allocation Increments or other moneys in any other Fund; (b) (i) to pay Payment Obligations and Administrative Costs, (ii) replenish the Debt Service Reserve Fund to the extent the balance of the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, and (iii) pay other eligible Redevelopment Costs, in that order. For purposes of Section 36-44-11(c) of the Act, the Majority Holder and the City acknowledge and agree that the portion of the Tax Increment Fund used to pay debt service on the Series 2001 Bonds, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2008 Bonds and the reserve held therein is the designated portion of the Tax Increment Fund allocable to the payment of debt service, and the Excess Tax Increment Fund is available for the payment of Redevelopment Costs, as described in Subsection (b) below.

(b) For each Fiscal Year the Historic Debt Service Coverage Ratio exceeds 1.10:1.00, the City may request the transfer of amounts in the Tax Increment Fund at the end of such Fiscal Year in excess of 1.00:1.00 (the "**Excess Increments**") to a special fund (the "**Excess Increment Fund**") to be used for Projects or to pay debt service on the Bonds, provided that the Excess Increments shall not be transferred to the Excess Increment Fund until the the greater of (a) \$5,000,000 or (b) 50% of the sum of the actual Payment Obligations and Administrative Costs for the prior Fiscal Year (the "**Supplemental Reserve Requirement**"), commencing with the Fiscal Year ending June 30, 2011, has been transferred to a special fund designated "City of Atlanta, Georgia – Supplemental Reserve Fund" (the "**Supplemental Reserve Fund**") each Fiscal Year. The request by the City to transfer the Excess Increments to the Excess Increment Fund shall be a written certificate, which (i) calculates the Historic Debt Service Coverage Ratio and Excess Increments, if any, to be released, (ii) certifies that the Supplemental Reserve Fund is funded at the Supplemental Reserve Requirement, and (iii) is signed by the Chief Financial Officer of the City, in a form and substance satisfactory to the Majority Holder, substantially as attached hereto as Exhibit B. The City hereby pledges, assigns, hypothecates and transfers the Tax Increment Fund and the Supplemental Reserve Fund and all moneys and investments held therein to the Majority Holder to secure the amounts owed by the City to the Majority Holder under this Agreement subject to the right to release Excess Increments. Upon the termination of this Agreement and payment in full of all Payment Obligations and Administrative Costs, the balance held in the Tax Increment Fund shall be transferred to or at the direction of the City. Unless otherwise consented to by the Majority Holder, no amounts held in the Supplemental Reserve Fund shall be released until the termination of this Agreement and payment in full of all Payment Obligations and Administrative Costs.

(c) The City shall establish a special fund designated "City of Atlanta, Georgia – Special Reserve Fund, Westside Project," into which there will be deposited, on or prior to the later of September 15, 2018 or the Reissuance Closing Date, \$2,500,000, and on or prior to September 15, 2019, an additional \$2,500,000 (the "**Special Reserve Fund**") from amounts received by the City from [name of CIM entity]. The Special Reserve Fund and all moneys and investments held therein secure the payment of Debt Service on the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds and shall not secure the payment of Additional Bonds issued after the date hereof. **[AS OF SEPTEMBER 15, 2019, AND AT ALL TIMES THEREAFTER, THE BALANCE IN THE SPECIAL RESERVE FUND SHALL BE EQUAL TO \$5,000,000 (THE "SPECIAL RESERVE REQUIREMENT").** ~~The [name of CIM entity] shall be solely responsible for funding any deficiency in the Special Reserve Fund~~**NEW LANGUAGE TO COME].** The City hereby pledges, assigns, hypothecates and transfers the Special Reserve Fund and all moneys and investment held therein to the Majority Holder to secure the payment of Debt Service on the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds. Unless otherwise consented to by the Majority Holder, no amounts held in the Special Reserve Fund shall be released until the termination of this Agreement and payment in full of the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008

Bonds.

(d) Payment Obligations and Administrative Costs shall be paid from the following funds in the following order of priority; first, the Tax Increment Fund; second, the Supplemental Reserve Fund; third, the Special Reserve Fund; and fourth, solely with respect to debt service on the Bonds, the Debt Service Reserve Fund.

**Section 5.05 Creation and Maintenance of Debt Service Reserve Fund.**

The City has heretofore established a special fund designated "City of Atlanta, Georgia - Debt Service Reserve Fund, Westside Project," into which there was deposited certain amounts pursuant to the provisions of the Original Indenture and Section 5.04 hereof. In addition, the City has previously transferred the amount specified in Section 204 of the Indenture to the Debt Service Reserve Fund from the Subordinate Debt Service Reserve Fund. The City hereby authorizes and directs the Majority Holder to only withdraw funds from the Debt Service Reserve Fund to pay Payment Obligations related to the Bonds, if there should be insufficient funds for said purposes in the Tax Increment Fund, Supplemental Reserve Fund and Special Reserve Fund, which authorization and direction the Majority Holder hereby accepts.

The Majority Holder shall give written notice to the City of any withdrawal from the Debt Service Reserve Fund and of any diminution in value or net losses from the investment of monies in the Debt Service Reserve Fund which reduces the amount deposited therein or credited thereto to less than the Debt Service Reserve Requirement. If the balance of the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, moneys in the Tax Increment Fund, Supplemental Reserve Fund, Special Reserve Fund or any available cash balances shall be deposited in accordance with Section 5.04 hereof into the Debt Service Reserve Fund, pursuant to Section 5.04 of this Agreement until the balance of the Debt Service Reserve Fund is equal to the Debt Service Reserve Requirement. If on December 2 in any year the balance of the Debt Service Reserve Fund is greater than the Debt Service Reserve Requirement, such excess shall be deposited to the Tax Increment Fund. The City hereby pledges, assigns, hypothecates and transfers the Debt Service Reserve Fund and all moneys and investments held therein to the Majority Holder to secure the amounts owed by the City to the Majority Holder under this Agreement and as a bondholder under the Indenture. Upon the termination of this Agreement and payment in full of all Payment Obligations, the balance held in the Debt Service Reserve Fund shall be delivered to the Trustee and used to redeem Bonds in accordance with the Indenture or to pay the principal of Bonds at maturity.

**Section 5.06 Annual Reports.**

The City shall use its best efforts to deliver to the Majority Holder within two hundred ten (210) days of the end of each Fiscal Year a report of the Tax Allocation Increments assessed and collected during such Fiscal Year. The City shall use its best efforts to deliver to the Majority Holder audited financial statements for the Westside Tax Allocation District Fund within two hundred ten (210) days of the end of each Fiscal Year.

**Section 5.07 Further Assurances.**

The City shall make, execute, endorse, acknowledge and deliver to the Majority Holder any amendments, restatements, modifications or supplements thereto and any other agreements, instruments or documents, and take any and all such other actions, as may from time to time be reasonably requested by the Majority Holder to effect, confirm or further assure or protect and preserve the interests, rights and remedies of the Majority Holder under this Agreement and the Related Documents.

Section 5.08 **Tax Collections.**

The City shall take or cause to be taken all actions permitted by applicable State and local law to collect all ad valorem property taxes and personal property taxes relating to World of Coca-Cola assessed by the City in the Westside TAD.

Section 5.09 **Optional Redemption of Bonds.**

- (a) The City shall exercise its option under Section 302 of the Indenture to redeem Series 2001 Bonds on the dates and in the principal amounts set forth in the following table:

<b><u>Redemption Date (December 1)</u></b>	<b><u>Principal Amount</u></b>
2011	\$760,000
2012	795,000
2013	830,000
2014	865,000
2015	905,000
2016	945,000
2017	985,000
2018	1,030,000
2019	1,075,000
2020	1,125,000
2021	152,500
2022	152,500

- (b) The City shall exercise its option under Section 302 of the Indenture to redeem Series 2005 Bonds on the dates and in the principal amounts set forth in the following table:

<b><u>Redemption Date (December 1)</u></b>	<b><u>Series 2005A Bonds Principal Amount</u></b>	<b><u>Series 2005B Bonds Principal Amount</u></b>
2012	\$2,410,000	\$455,000
2013	3,085,000	495,000
2014	3,230,000	510,000
2015	3,370,000	535,000
2016	3,530,000	560,000
2017	3,710,000	590,000

<b><u>Redemption Date (December 1)</u></b>	<b><u>Series 2005A Bonds Principal Amount</u></b>	<b><u>Series 2005B Bonds Principal Amount</u></b>
2018	3,900,000	620,000
2019	4,070,000	640,000
2020	4,240,000	670,000
2021	4,400,000	695,000
2022	5,685,000	725,000
2023	10,385,000	1,555,000

- (c) The City shall exercise its option under Section 302 of the Indenture to redeem Series 2008 Bonds on the dates and in the principal amounts set forth in the following table:

<b><u>Redemption Date (December 1)</u></b>	<b><u>Principal Amount</u></b>
2011	\$710,000
2012	900,000
2013	950,000
2014	2,180,000
2015	2,245,000
2016	2,330,000
2017	2,400,000
2018	2,480,000
2019	2,570,000
2020	2,640,000
2021	2,730,000
2022	2,825,000
2023	330,000
2024	2,060,000
2025	2,130,000
2026	2,205,000

<b>Redemption Date (December 1)</b>	<b>Principal Amount</b>
2027	2,270,000
2028	2,355,000
2029	2,425,000
2030	2,500,000
2031	2,585,000
2032	2,670,000
2033	2,760,000
2034	2,850,000
2035	2,945,000
2036	3,035,000
2037	1,925,000

- (d) Other than as provided in this Section 5.09, the Bonds shall not be subject to optional redemption by the City (i) prior to September 1, 2020 with respect to the Series 2005 Bonds and the Series 2008 Bonds, and (ii) prior to December 1, 2022 with respect to the Series 2001 Bonds.

**Section 5.10 Certificate of City.**

The City covenants and agrees that it will furnish to the Majority Holder not later than September 15 of each year a calculation of the Historic Debt Service Coverage Ratio for the preceding Fiscal Year in the form of the certificate attached hereto as Exhibit B, together with a detailed breakdown of the Tax Allocation Increments collected within the Westside TAD with and without the Gulch Area.

**Section 5.11 More Favorable Terms and Conditions.**

In the event that the City shall, directly or indirectly, enter into or otherwise consent to any agreement or instrument (or any amendment, supplement or modification thereto) relating to Westside TAD under which, directly or indirectly, any Person or Persons undertakes to make or provide credit or loans to the City secured by, or payable from, Tax Allocation Increments which agreement (or amendment, supplement or modification) provides such Person or Persons with more additional or restrictive covenants, additional or different events of default and/or greater rights or the remedies related thereto than are provided to the Beneficial Owners in this Agreement, the City shall provide the Majority Holder with a copy of each such agreement (or amendment, supplement or modification) within five (5) Business Days of any such agreements or instruments and, in any event, such additional or more restrictive covenants, such additional or different events of default and/or greater rights and remedies shall, unless otherwise stipulated by the Majority Holder, automatically be deemed to be incorporated into this Agreement, and the Beneficial Owners shall have the benefits of

such additional more restrictive covenants, additional or more restrictive events of default and/or such greater rights and remedies as if specifically set forth herein for so long as any such agreement or instrument that provides for such additional or more restrictive covenants, such additional or different events of default and/or such greater rights and remedies remain in effect. Upon the request of the Majority Holder, the City shall promptly enter into an amendment to this Agreement to incorporate herein and make a part hereof such additional or more restrictive covenants, additional or different events of default and/or greater rights.

#### Section 5.12 **Immunity.**

The City acknowledged that, as of September 1, 2017, the City does not have the legal right to an immunity claim with respect to the enforcement of its contractual obligations under State law. The City hereby affirmatively retains all rights under State law to raise any available sovereign immunity defense on any tort claims that may arise under this Agreement. Should a change in law occur during the term of this Agreement that would give the City a legal right to any immunity claim with respect to the enforcement of its contractual obligations, the City hereby agrees to amend this Agreement to waive any such right to such immunity claims to the extent such waiver is permitted by State law; provided that the Bank must provide written notice and documentation of the change of law, and the City has 90 days from the date of the notice to amend this Agreement.

### **ARTICLE VI. NEGATIVE COVENANTS OF CITY**

Until all the obligations to be performed and paid under this Agreement shall have been performed and paid in full, unless the Majority Holder shall otherwise consent in writing, the City will not either directly or indirectly:

#### Section 6.01 **Additional Indebtedness.**

Incur or guaranty any indebtedness secured by a claim on Tax Allocation Increments other than indebtedness secured as described in Section 5.04 hereof and Additional Bonds. While this Agreement is in effect, no Additional Bonds shall be issued without the prior written consent of the Majority Holder. As a condition to the Majority Holder's consent to the issuance of Additional Bonds, the City shall provide to the Majority Holder satisfactory evidence of the following:

- (i) the Historic Debt Service Coverage Ratio was at least 1.30: 1.00; and
- (ii) for the two Fiscal Years following the Fiscal Year in which the proposed additional Projects funded by such proposed Additional Bonds are scheduled to be completed, the sum of Tax Allocation Increments for the Fiscal Year preceding the Fiscal Year in which the Majority Holder's consent is sought, plus the new Tax Allocation Increments projected for the two Fiscal Years following the completion of the proposed additional Projects, plus interest income on the Debt Service Reserve Fund projected for the two Fiscal Years following the completion of the proposed additional Projects shall cover:
  - (a) Debt Service plus Administrative Costs payable in such Fiscal Years on the Series 2001 Bonds, the Series 2005 Bonds and the Series 2008 Bonds, plus Debt Service and Administrative Costs payable in such Fiscal Years on any Additional Bonds that have been issued at the time of such determination, plus projected Debt Service and Administrative Costs on the proposed Additional Bonds, by a ratio of 1.30: 1.00; and

(b) Maximum Annual Debt Service on the Series 2001 Bonds, the Series 2005 Bonds, the Series 2008 Bonds, any Additional Bonds that have been issued at the time of such determination and the proposed Additional Bonds, by a ratio of 1.20:1.00.

**Section 6.02 Liens and Encumbrances.**

Create, assume or suffer to exist any lien or security interest securing a charge or obligation, on Tax Allocation Increments, except for the liens and security interests in favor of the Majority Holder created by this Agreement.

**Section 6.03 Amendments; Prepayments of Additional Bonds, Etc.**

Amend, modify or supplement (or permit the amendment or modification of) any of the terms or provisions of any Additional Bonds secured by Tax Allocation Increments (or any agreement related thereto); make any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due) or exchange any such Additional Bonds without the prior written consent of the Majority Holder, such consent to not be unreasonably withheld.

**Section 6.04 No Other Negative Pledges.**

With the exception of this Agreement and the Indenture, enter into any agreement prohibiting the creation or assumption of any lien upon the Tax Allocation Increments or requiring an obligation to be secured by Tax Allocation Increments if some other obligation is secured without the prior written consent of the Majority Holder, such consent to not be unreasonably withheld.

**Section 6.05 Certain Tax Matters.**

Invest, or cause the investment of, the proceeds of the Bonds in any way that would violate the Code or cause the Bonds to be "arbitrage bonds" or knowingly take any action or omit to take any action if such action or omission would adversely affect the exclusion of interest on the Bonds from the gross income of the holders thereof for federal income tax purposes.

**ARTICLE VII.  
CONDITIONS PRECEDENT TO PURCHASE OF BONDS**

**Section 7.01 Conditions Precedent to Purchase of Bonds.**

On or prior to the Reissuance Closing Date, the City shall have furnished to the Majority Holder, in form satisfactory to the Majority Holder and its counsel, the following:

- (a) Two executed counterparts of this Agreement;
- (b) An opinion of counsel for the City dated the Reissuance Closing Date addressed to the Majority Holder, and in form and substance acceptable to the Majority Holder and its counsel;
- (c) A certificate signed by an officer of the City, dated the Reissuance Closing Date and stating that (1) the representations and warranties contained in Article III of this Agreement are true and correct on and as of the Reissuance Closing Date as though made on such date, (2) no Event of Default has occurred and is continuing, or would result from the execution and delivery of this Agreement or any Related Document to which the City is a party, and no event has occurred and is continuing that would constitute an Event of Default, (3) evidence of internal governance action authorizing the execution, delivery and performance of this

Agreement and the other Related Documents; (4) incumbency and specimen signatures of authorized representatives, and (5) such other matters as the Majority Holder may require;

(d) A copy of ordinances of the City, certified as of the Reissuance Closing Date by an officer of the City, that authorize, among other things, the City to cause the execution, delivery and performance by the City of this Agreement and the Related Documents to which it is a party;

(e) True, correct and complete copies of all governmental approvals (if any) necessary for the City to enter into this Agreement and the Related Documents to which it is a party and the transactions contemplated thereby other than those not required to be obtained at or prior to the Reissuance Closing Date;

(f) True and correct copies of the approvals of the School Board and Fulton County relating to the release of the Gulch Area from the Westside TAD for purposes of securing the Payment Obligations and consenting to the inclusion of its share of ad valorem property tax revenues in the computation of the tax allocation increment for the Westside TAD through December 31, [2048];

(g) The receipt of such other documents, certificates and opinions as the Majority Holder or Majority Holder's counsel may reasonably request;

(h) Delivery to the Majority Holder upon its request copies of the annual report of the Atlanta-Fulton County Joint Board of Tax Assessors required by Section 36-44-10(E) of the Act as to the current taxable value of property within the Westside TAD and the tax allocation increment base required by Section 5.03 hereof for any years as requested by the Majority Holder;

(i) An opinion of Bond Counsel dated the Reissuance Closing Date addressed to the Majority Holder and in form and substance acceptable to the Majority Holder and its counsel; and

(j) Such other documents, instruments and certifications as the Majority Holder may require.

## **ARTICLE VIII. EVENTS OF DEFAULT; REMEDIES**

### **Section 8.01 Events or Default.**

Each of the following shall constitute an Event of Default under this Agreement, whereupon all obligations of the City under this Agreement, whether then owing or contingently owing, will, at the option of the Majority Holder or its successors or assigns immediately become due and payable by the City without presentation, demand, protest or notice of any kind, all of which are hereby expressly waived, and the City will pay the reasonable attorneys' fees incurred by the Majority Holder, or its successors or assigns, in connection with such Event of Default or recourse against any Collateral held by the Majority Holder or its successors or assigns, as Security for the obligations under this Agreement;

(a) Failure of the City to pay when due any payment of principal, interest, commission, charge or expense referred to in Article III of this Agreement, and such failure shall continue for a period of five (5) days after notice of such failure is given by the Majority Holder to the City;

- (b) The occurrence of an "event of default" or an "Event of Default" under any of the Related Documents (after taking into account all applicable notice and cure provisions);
- (c) Any representation, warranty, certification or statement made by the City in this Agreement, or in any writing furnished by or on behalf of the City pursuant to this Agreement shall have been false, misleading or incomplete in any material respect on the date as of which made, if the harm resulting therefrom has not been effectively cured within ten (10) days (or such longer period as is reasonably agreed to by the Majority Holder and the City, but in any event terminating at the earliest moment that the City is no longer prosecuting such cure with reasonable diligence) of written notice of such falsity, misleading nature of incompleteness shall have been received by the City from the Majority Holder;
- (d) The City defaults in the performance or observance of any material agreement, covenant, term or condition binding on it contained herein and such default shall not have been remedied within thirty (30) days (or any shorter period set forth in such agreement or document) after the earlier of: (1) the City having knowledge thereof; or (2) written notice shall have been received by it from the Majority Holder;
- (e) The commencement of the liquidation or dissolution of the City, or suspension of the business of the City or filing by the City of a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Reform Act of 1978, as amended (the "**Bankruptcy Code**"), or under any other insolvency act or law, state or Federal, now or hereafter existing, or any other action of the City indicating its consent to, approval of, or acquiescence in any such petition or proceeding, or the application by the City for (or the consent or acquiescence to) the appointment of a receiver or a trustee of the City or an assignment for the benefit of creditors, the inability of the City or the admission by the City in writing of its inability to pay its debts as they mature;
- (f) The entry of an order in any proceedings against the City decreeing the dissolution of the City;
- (g) Any lien shall be created or exist with respect to the Trust Estate granted to the Trustee in the granting clauses of the Indenture or any funds held under the Indenture, which lien shall continue unbonded or unstayed for a period of 30 days, or which poses a material risk to the priority of the Trustee's and the Majority Holder's interest therein or in respect of which execution proceedings shall have been commenced;
- (h) Any action or proceeding shall be brought challenging the City's right to issue the Bonds, the validity and enforceability thereof, or the validity, enforceability, priority, or perfection of the lien on the Trust Estate, in which there shall exist, in the reasonable judgment of the Majority Holder (based on the advice of counsel), a substantial risk of an adverse determination, and which adverse determination would have a materially adverse effect on the Bonds, the Trust Estate, or the interest of the Majority Holder or the Trustee therein;
- (i) The dissolution or termination of the existence of the City;
- (j) The occurrence of a Determination of Taxability, as defined in the Indenture; or
- (k) Failure to maintain a Debt Service Coverage Ratio of at least 1.0x.

## Section 8.02 Remedies.

Upon the occurrence of an Event of Default and at any time thereafter, the Majority Holder may (1) pursuant to Section 901 of the Indenture, by notice to the City, (such notice to be given (i) in respect of Events of Default specified in Section 8.01(a), (b), (e), (f), (g), (h), (i), (j) or (k), not less than seven (7) days after the occurrence of any such Event of Default, (ii) in respect of the Events of Default specified in Section 8.01(c), not less than twenty (20) days after the occurrence of any such Event of Default, or (iii) in respect of the Event of Default specified in Section 8.01(d), immediately after the occurrence of any such Event of Default) advise the Trustee that an Event of Default has occurred and instruct the Trustee to declare the principal of all Bonds then outstanding and interest thereon to be immediately due and payable or (2) proceed under this Agreement, and under any of the Related Documents, in such order as it may elect and the Majority Holder shall have no obligation to proceed against any Person or exhaust any other remedy or remedies which it may have and without resorting to any other security, whether held by or available to the Majority Holder.

## Section 8.03 No Remedy Exclusive.

No remedy herein conferred upon or reserved to the Majority Holder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, under the Related Documents, or now or hereafter existing at law or in equity or by statute.

## Section 8.04 Anti-Marshalling Provisions.

The right is hereby given by the City to the Majority Holder to make releases (whether in whole or in part) of all or any part of the Collateral under this Agreement agreeable to the Majority Holder without notice to, or the consent, approval or agreement of other parties and interests, including junior lienholders, which releases shall not impair in any manner the validity of or priority of the liens and security interest in the remaining Collateral conferred under such document, nor, release the City from liability for the obligations hereby secured. Notwithstanding the existence of any other security interest in the Collateral held by the Majority Holder, the Majority Holder shall have the right to determine the order in which any or all of the Collateral shall be subjected to the remedies provided herein. The City hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein or therein.

## **ARTICLE IX. MISCELLANEOUS**

## Section 9.01 Investment of Funds.

The Majority Holder shall from time to time invest funds on deposit in the Tax Increment Fund, reinvest proceeds of any such investments which may mature or be sold, and invest interest or other income received from any such investments, in each case in such investments as are directed by the City in writing; provided, however, the City agrees and directs the Majority Holder to invest any funds on deposit in the Excess Increment Fund, Supplemental Reserve Fund and Special Reserve Fund at a yield not in excess of the yield on the Bonds unless the City provides an opinion of Bond Counsel to the effect that investment of such funds at a higher yield will not adversely affect the tax-exempt status of the Bonds, and the City agrees to pay any requested rebate to the United States of America, in order for the Bonds not to be or become "arbitrage bonds" within the meaning of Section 148 of the Code, and any applicable regulations thereunder; provided, further, however, that the Majority Holder and the City may conclusively rely on an opinion of Bond Counsel or other legal counsel (including in-house counsel) in determining whether they have complied with the obligations

of the immediately preceding proviso and the Majority Holder shall not be liable for any failure to comply with such obligations if the Majority Holder shall have relied on any such opinion.

#### Section 9.02 **Stamp, Excise and Similar Taxes.**

The City agrees to indemnify and hold the Majority Holder and any Participant harmless from any present or future claim or liability for stamp, excise or other similar tax (other than taxes on or measured by gross or net income) and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution and delivery of this Agreement, the Bonds and the other Bond Documents, or any amendment thereto and all liabilities with respect to or resulting from any delay by the City in paying or omission to pay any such taxes and fees following notice by the Majority Holder to the City requesting such payment.

#### Section 9.03 **Participants.**

As long as it shall not adversely affect the rating on the Bonds, the Majority Holder shall have the right to sell the Bonds (subject to the conditions set forth in the Indenture and Section 9.05 hereof) grant participations (to be evidenced by one or more Participation Agreements or certificates of participation) in this Agreement to one or more other banking institutions, and such Participants shall be entitled to the benefits of this Agreement to the same extent as if they were a direct party to this Agreement; provided however, that no such Participant shall be entitled to receive payment under this Agreement of any amount greater than the amount that would have been payable had the Majority Holder not granted a participation to such Participant.

#### Section 9.04 **Survival of this Agreement.**

All covenants, agreements, representations and warranties made in this Agreement shall survive and shall continue in full force and effect so long as any sums due under this Agreement shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable under this Agreement remains unpaid. The obligation of the City to reimburse the Majority Holder pursuant to Sections 3.03, 9.01 and 9.12 and the second sentence of Section 9.19 of this Agreement shall survive the payment of the Payment Obligations under this Agreement and the Bonds and termination of this Agreement. Whenever in this Agreement the Majority Holder is referred to, such reference shall be deemed to include the successors and assigns of the Majority Holder and all covenants, promises and agreements by or on behalf of the City that are contained in this Agreement shall inure to the benefit of the successors and assigns of the Majority Holder. The rights and duties of the City, however, may not be assigned or transferred except as specifically provided in this Agreement or with the prior written consent of the Majority Holder, and all obligations of the City under this Agreement shall continue in full force and effect notwithstanding any assignment by the City of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the City to, any supplement or amendment to any of the Related Documents.

#### Section 9.05 **Successors and Assigns.**

This Agreement shall be binding upon the City, its successors and assigns and all rights against the City arising under this Agreement shall be for the sole benefit of the Majority Holder, its successors and assigns, all of whom shall be entitled to enforce performance and observance of this Agreement to the same extent as if they were parties to this Agreement. A Beneficial Owner may, in accordance with applicable law, from time to time, sell or transfer the Bonds. Without limitation of the foregoing generality:

(a) A Beneficial Owner may at any time sell or otherwise transfer to one or more transferees (each a "**Transferee**") all or a portion of the Bonds if (1) written notice of such sale or transfer,

together with addresses and related information with respect to the Transferee, shall have been given to the City, the Trustee and the Majority Holder by such selling Beneficial Owner and Transferee, and (2) the Transferee shall have delivered to the City, the Trustee and the Majority Holder, an investment letter in substantially the form attached as Exhibit C to this Agreement (each an "**Investment Letter**").

(b) From and after the date the City, the Trustee and the Majority Holder have received an executed Investment Letter, (1) the Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Beneficial Owner hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Transferee, and any reference to the assigning Beneficial Owner hereunder and under the other Related Documents shall thereafter refer to such transferring Beneficial Owner and to the Transferee to the extent of their respective interests, and (2) if the transferring Beneficial Owner no longer owns any Bonds, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(c) If at any time a Transferee owns 51% or more in aggregate principal amount of the Bonds, such Transferee may act as successor Majority Holder. Upon notification thereof to the City, the successor Majority Holder shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Majority Holder and the previous Majority Holder shall be discharged from its duties and obligations hereunder. Upon receipt of notification of a change in the Majority Holder, the City shall provide written notice of such change to the Trustee.

#### Section 9.06 **Notices.**

All notices, requests and demands to or upon the respective parties to this Agreement shall be deemed to have been given or made when hand delivered or mailed first class, certified or registered mail, postage prepaid, addressed as follows or to such other address as the parties to this Agreement shall have been notified pursuant to this Section 9.06:

The Majority Holder:                   Wells Fargo Bank, National Association  
360 Interstate North Parkway,  
S.E. Suite 500, MAC G0147-054  
Atlanta, Georgia 30339  
Attention: Government & Institutional Banking  
Telecopier: (678) 589-4315  
Telephone: (678) 589-4312

The City:                                   City of Atlanta, Georgia  
Department of Finance  
68 Mitchell St., Suite 1100  
Atlanta, GA 30335  
Attention: Finance Director  
Telecopier: (404) 330-6667  
Telephone: (404) 330-6454

with a copy to:                           City of Atlanta  
Department of Law  
68 Mitchell St., Suite 4100  
Atlanta, GA 30335  
Attention: City Attorney  
Telecopier: (404) 658-6894  
Telephone: (404) 330-6469

except in cases where it is expressly herein provided that such notice, request or demand is not effective until received by the party to whom it is addressed, in which event said notice, request or demand shall be effective only upon receipt by the addressee.

**Section 9.07 Amendment.**

This Agreement may be amended, modified or discharged only upon an agreement in writing of the City and the Majority Holder.

**Section 9.08 Effect of Delay and Waiver.**

No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Majority Holder to exercise any remedy now or hereafter existing at law or in equity or by statute, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Agreement should be breached by any party and thereafter waived by the other party so empowered to act, such waiver shall be limited to the particular breach under this Agreement. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Agreement.

**Section 9.09 Headings.**

The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions of this Agreement.

**Section 9.10 Counterparts.**

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

**Section 9.11 Severability.**

The invalidity or unenforceability of anyone or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

**Section 9.12 Cost of Collection.**

Subject to Section 3.10 hereof, the City shall be liable for the payment of all fees and expenses, including attorneys' fees (computed without regard to any statutory presumption), incurred in connection with the enforcement of this Agreement.

**Section 9.13 Setoff.**

Upon the occurrence of an Event of Default under this Agreement, the Majority Holder is hereby authorized, without notice to the City, to setoff, appropriate and apply any and all monies, securities and other properties of the City hereafter held or received by or in transit to the Majority Holder from or for the City, against the obligations of the City irrespective of whether the Majority Holder shall have made any demand under this Agreement.

**Section 9.14 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 9.15 References.**

The words "herein," "hereof," "hereunder," and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection.

**Section 9.16 Taxes, etc.**

Subject to Section 3.10 hereof. any taxes (excluding taxes on or measured by gross or net income) payable or ruled payable by federal or state authority in respect of this Agreement shall be paid by the City upon demand by the Majority Holder, together with interest and penalties, if any.

**Section 9.17 Consent to Jurisdiction, Waiver or Jury Trial.**

The City hereby consents to the jurisdiction of any state court within Fulton County, Georgia or any federal court located within the Northern District of the State of Georgia, for any proceeding to which the Majority Holder is a party and consents that all service of process be made by registered or certified mail directed to the City at the address indicated in Section 9.07 or at such other address as the City may have designated in writing to the Majority Holder, and service so made shall be deemed to be completed upon the earlier of actual receipt thereof or three (3) days after deposit in the United States mails, proper postage prepaid and properly addressed. To the extent permitted by law, the City voluntarily and knowingly waives trial by jury and waives any objection which it may have based on lack of jurisdiction or improper venue or forum non conveniens to the conduct of any proceeding instituted under this Agreement, or arising out of or in connection with this agreement, or any proceeding to which the Majority Holder is a party, including any actions based upon, arising out of or in connection with any course of conduct, course of dealing, statement (whether oral or written) or actions of the Majority Holder or the City, and the City consents to the granting of such legal or equitable relief as is deemed appropriate by the court. In the event that the City's waiver of jury trial herein shall be determined to be invalid or unenforceable as a matter of law, the City and the Majority Holder agree that the provisions of Section 9.14 of this Agreement shall govern as to the matters set forth herein. Nothing in this Section shall affect the right of the Majority Holder to serve legal process in any other manner permitted by law or affect the right of the Majority Holder to bring any action and proceeding against the City or the Collateral in the courts of any jurisdiction that has jurisdiction over the City or the Collateral.

**Section 9.18 Waiver of Automatic or Supplemental Stay.**

In the event that a petition for relief under any chapter of the Bankruptcy Code is filed by or against the City, the City promises and covenants that it will not seek a supplemental stay pursuant to Bankruptcy Code Sections 105 or 362 or any other relief pursuant to Bankruptcy Code Section 105 or any other provision of the Bankruptcy Code, whether injunctive or otherwise, which would stay, interdict, condition, reduce or inhibit the Majority Holder's ability to enforce any rights it has, at law or in enquiry, to collect the Payment Obligations of the City from any Person other than the City.

**Section 9.19 Continuing Obligation; Revival of Obligation.**

The obligations of the City under this Agreement shall continue until all amounts due and owing to the Majority Holder under this Agreement as of the Termination Date shall have been paid in full; provided, however, that the obligations of the City pursuant to Section 9.12 of this Agreement shall survive the termination of this Agreement. The City further agrees that to the extent the City makes

a payment to the Majority Holder, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other party under any bankruptcy, insolvency or other similar state or federal statute, common law or principles of equity, then, to the extent of such repayment by the Majority Holder, the Payment Obligations or part thereof intended to be satisfied by such payment shall be revived and continued in full force and effect as if such payment had not been received by the Majority Holder.

#### Section 9.20 **Confirmation of Lien.**

The City hereby grants to the Majority Holder, to secure payment by the City of sums due under this Agreement, a lien on moneys or instruments (at such times as they become payable to the City under the Indenture) which the City has an interest in or title to pursuant to Article VI of the Indenture, now or hereafter held in the Bond Fund or the Project Fund or otherwise by the Trustee under any provision of the Indenture and in the right of the City to receive any such moneys or instruments. The Majority Holder hereby confirms that such lien is and shall be junior and subordinate to the lien on such moneys in favor of the owners of the Bonds and the Trustee.

#### Section 9.21 **Indirect Means.**

Any act which the City is prohibited from doing shall not be done indirectly.

#### Section 9.22 **Entire Agreement.**

This Agreement and the other Related Documents, including the Exhibits and attachments to this Agreement and thereto, constitute the entire agreement between the parties relating to this Agreement and supersede all other prior agreements between the parties relating to the subject matter of this Agreement. Reference in this Agreement to documents or instruments other than those referred to in the preceding sentence is for identification purposes only, and such reference shall not modify or affect the terms of this Agreement or cause such documents or instruments to be deemed incorporated herein.

#### Section 9.23 **Conflicts.**

In the event of any conflict between any term or provision of this Agreement, and any term or provision of any of the Related Documents, the term or provision of this Agreement shall control.

#### Section 9.24 **Arbitration.**

(a) To the extent permitted by applicable law, upon demand of any party to this Agreement, whether made before or after institution of any judicial action, any dispute, claim or controversy arising out of or connected with this Agreement, any documents related to this Agreement, the Bond Documents or the Bonds (other than disputes under or relating to any interest rate hedge, swap or cap agreement) ("**Disputes**") between the parties to this Agreement shall be resolved by binding arbitration as provided herein. Disputes may include, without limitation, tort claims, counterclaims, disputes as to whether a matter is subject to arbitration, claims brought as class actions, claims arising from any Related Documents executed in the future, and/or claims arising out of or connected with the transactions contemplated under the Related Documents. All applicable statutes of limitation shall apply to any Dispute. Arbitration shall be conducted under the Commercial Financial Disputes Arbitration Rules (the "**Arbitration Rules**") of the American Arbitration Association and Title 9 of the United States Code. The arbitrator(s) shall be selected as provided in accordance with the Arbitration Rules; provided, however, each arbitrator selected shall be a licensed attorney having at least five (5) years secured transactional experience, unless otherwise agreed to by the parties. With regard to claims of less than \$1,000,000, the expedited procedures set forth in Rule 51 et seq. of the

Arbitration Rules shall be applicable. The single arbitrator selected for an expedited procedure shall be a retired judge from the highest court of general jurisdiction, state or federal, of the state where the hearing will be conducted, or if such person is not available to serve, the single arbitrator shall be a licensed attorney. If either party brings any action for judicial relief in connection with a Dispute in the first instance without first pursuing arbitration as provided above prior thereto, the party bringing such action for judicial relief shall be liable for and shall immediately pay to the other party all of the other party's costs and expenses (including, without limitation, court costs and attorneys' fees and expenses) incurred by the other party to stay or dismiss such judicial action and/or to remove such action to arbitration.

(b) All arbitration hearings shall be conducted in the city where payments under this Agreement are to be made or any place agreed to in writing by the parties. At least thirty (30) days prior to the first hearing day, each party shall furnish to each other party a list of anticipated witnesses and a list of anticipated exhibits, together with a copy of each exhibit. Each party (a group of parties with similar interests being considered as one party) shall have a maximum of the equivalent of five (5) hearing days to complete their case (including any redirect examination of witnesses or rebuttal presentation of evidence) and cross-examine the witnesses of all other parties.

(c) The arbitrator(s) shall render a final award in writing within sixty (60) days of the conclusion of the hearing. The arbitrator(s) shall not be empowered to award punitive or exemplary damages. To the extent permitted by applicable law, each party to this Agreement waives any right or claim to punitive or exemplary damages such party may now have or which may arise in the future in connection with any Dispute, whether the Dispute is resolved by arbitration or judicially. A judgment upon the award may be entered in any court having proper jurisdiction. To the extent permitted by applicable law, if either party brings or appeals any judicial action to vacate or modify any award rendered pursuant to arbitration or opposes confirmation of such award and the party bringing or appealing such action or opposing such confirmation of such award does not prevail, such party shall pay all of the cost and expenses (including, without limitation, court costs, arbitrators' fees and expenses and attorneys' fees and expenses) incurred by the other party in defending such appeal or opposition.

(d) Notwithstanding the foregoing, the Majority Holder and the City preserve certain remedies that any party to this Agreement may exercise freely, either alone or prior to, during or after the initiation of arbitration concerning a Dispute, which shall not constitute a waiver of the right of any party to submit any Dispute to arbitration as provided herein. Preservation of these remedies does not limit the power of an arbitrator to grant similar remedies that may be requested by a party in a Dispute.

(e) This agreement to submit Disputes to binding arbitration shall survive termination of this Agreement. With regard to enforcement of the remedies preserved in Section 9.24(d) above or in the event the foregoing provisions regarding binding arbitration are found by a court of competent jurisdiction to be unenforceable, the parties to this Agreement agree that Sections 9.14 and 9.17 shall apply to any suit, action or proceeding with respect to a Dispute.

#### Section 9.25 **Waiver of Attorneys' Fees Statute.**

The parties hereby agree that each party's obligations hereunder or under any of the Related Documents to pay attorneys' fees and expenses of another party or to reimburse another party for such fees and expenses, shall extend only to such fees and expenses as are actually incurred by such other party, and that the provisions of O.C.G.A. §13-1-11(a)(2), or any other similar statute providing otherwise, shall have no application to any such obligations.

#### Section 9.26 **Patriot Act Notice.**

The Majority Holder hereby notifies the City that, pursuant to the requirements of the Patriot Act, the Majority Holder is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Majority Holder to identify the City in accordance with the Patriot Act. The City shall, promptly following a request by the Majority Holder, provide all such other documentation and information that the Majority Holder requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

**Section 9.27 No Advisory or Fiduciary Relationship.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the City acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Majority Holder and any Affiliate thereof are arm's-length commercial transactions between the City, on the one hand, and the Majority Holder and its Affiliates, on the other hand, (ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Majority Holder and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the City or any other Person, and (ii) neither the Majority Holder nor any of its Affiliates has any obligation to the City with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Majority Holder and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Majority Holder nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the fullest extent permitted by law, the City hereby waives and releases any claims that it may have against the Majority Holder or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**Section 9.28 Amendment and Restatement.**

This Agreement shall become effective on the Reissuance Closing Date and shall supersede, amend and restate all provisions of the Original Agreement as of such date. From and after the Reissuance Closing Date, all references made to the Original Agreement in any instrument or document shall, without any further action or documentation, be deemed to refer to this Agreement. Without limiting the foregoing, the parties to this Agreement hereby acknowledge and agree that the "Agreement" referred to in the Original Agreement shall from and after the Reissuance Closing Date be deemed a reference to this Agreement.

[Signatures Begin on Following Page]

**IN WITNESS WHEREOF**, the City and the Majority Holder have caused this Amended and Restated Continuing Covenants Agreement to be sealed and executed in their respective names by their duly authorized representatives, all as of the date first above written.

**CITY OF ATLANTA, GEORGIA**

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

Attest. \_\_\_\_\_

[SEAL]

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Velma L. Davis

Attest. \_\_\_\_\_

[Signature Page to Amended and Restated Continuing Covenants Agreement]

**EXHIBIT A**

**DESCRIPTION OF SERIES 2001 PROJECTS, SERIES 2005 PROJECTS AND SERIES 2008 PROJECTS**

**DESCRIPTION OF SERIES 2001 PROJECTS**

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2001 BOND PROCEEDS
Historic Westside Village (Inner City Development Corporation)	Transit-oriented mixed-used development. Block 3: 40,000-sq. ft. grocery store; 200-unit loft mid-rise & parking deck; 40 fee simple townhouses. Block 1: 150,000 sq. ft. office building and parking deck; 127 units of apartments over 104,000-sq. ft. retail; 2 story retail theatre. Block 2: 150,000 sq. ft. Hotel/Retail/Office; 501 space parking deck. 14 units of for sale town homes.	<ul style="list-style-type: none"> <li>• Parking</li> <li>• Public Space</li> <li>• Streetscape and Plaza</li> <li>• Infrastructure</li> <li>• Environmental</li> <li>• Utilities</li> </ul>
Centennial Hill (CHDP CONDO, LLC)	130 Condominium units, One and Two Bedroom Plans, 30,000-sq. ft. Children's Museum; 280,000 sq. ft. Office Building; 1200 public/private covered parking spaces; and Street level retail. The third phase will have an apartment tower with over 200 mixed income units and street level retail.	<ul style="list-style-type: none"> <li>• Children's Museum</li> <li>• Streetscapes</li> </ul>
123 Luckie Street (Center City Housing Corporation, LLC)	Urban Infill on historic Luckie Street; 49 residential Condominium units; 2 street front retail units; 40 One Bedrooms; 9 two-story units with roof decks.	<ul style="list-style-type: none"> <li>• Utilities</li> <li>• Hardscape/Streetscapes</li> </ul>
Atlanta Centennial House (Atlanta Centennial House, LLC)	101 residential condominium units: 3,000 square ft. of retail space; five levels of condominiums over 2.5 levels of parking and retail; 50 studio with 1 bath, 20 One Bedroom flats with 1.5 baths, 6 One Bedroom flats with 1.5 baths (street front), 25 two Bedrooms with 2.5 baths. 25% of units will be sold at reduced prices for "moderate income" buyers.	<ul style="list-style-type: none"> <li>• Streetscape and small park</li> </ul>

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2001 BOND PROCEEDS
Centennial Market (Centennial Market, LLC)	Centennial Place retail center will contain 43,320 SF of retail space anchored by a 30,560 SF national chain grocery store. The project will include 12,760 SF of street front retail along Centennial Olympic Park Drive (Techwood Drive). The project is in compliance with the COPA SPI District.	<ul style="list-style-type: none"> <li>• Sewer</li> <li>• Parking</li> <li>• Landscape</li> </ul>
Northyards Business Park (Northyards Partners, LLC)	Redevelopment of historic rail round house, yard house, rail house, and switch house into call center and loft office. Total Square feet available 256,595.	<ul style="list-style-type: none"> <li>• Site Work</li> <li>• Sewer Upgrade</li> </ul>

**DESCRIPTION OF SERIES 2005 PROJECTS**

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2005 BOND PROCEEDS
World of Coca-Cola (The Coca-Cola Company)	A corporate attraction and family entertainment destination encompassing 83,000 square feet surrounded by a plaza and green space and a 515 space structured parking facility.	<ul style="list-style-type: none"> <li>• Development of the common entry plaza</li> <li>• Development of an urban park</li> <li>• Screening of the structured parking facility</li> </ul>
55 Allen Plaza (Barry Real Estate Companies Inc.)	A 13 story, approximately 322,970 square foot office tower with approximately 23,200 square feet of street level retail.	<ul style="list-style-type: none"> <li>• Environmental remediation</li> <li>• Utility installation</li> <li>• Streetscapes, sidewalks and landscaping</li> <li>• On-street parking</li> <li>• Structured parking facility</li> </ul>
Marietta Place (Legacy Property Group, LLC)	The renovation and expansion of a 3-story office building into a multi-tenanted restaurant and retail facility	<ul style="list-style-type: none"> <li>• Upgrading the electrical service</li> <li>• Reinforcing the structure of the building</li> <li>• Providing new service elements</li> <li>• Developing a new common building grease trap</li> </ul>

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2005 BOND PROCEEDS
Winecoff Hotel (FB Winecoff, LLC)	The restoration of the Winecoff Hotel into a full-service boutique hotel with 127 guest rooms, a ground floor café, a dining room and lounge, and meeting and conference rooms	<ul style="list-style-type: none"> <li>• Environmental remediation</li> <li>• Utility installation</li> <li>• Streetscapes, sidewalks and landscaping</li> <li>• Acquisition of and improvements to neighboring real property</li> <li>• Construction of a ground floor café and second floor balcony</li> <li>• Window repair and refurbishment of all facades</li> </ul>
Park Pavilion (Legacy Property Group, LLC)	The renovation and expansion of an existing three level parking facility into a mixed-use facility including a hotel, retail, restaurants and parking	<ul style="list-style-type: none"> <li>• Pavement rehabilitation</li> <li>• Sidewalk enhancements</li> <li>• Signage and landscaping</li> <li>• Lighting</li> <li>• Architecture and façade treatment</li> <li>• Expansion structured parking facility</li> </ul>
Glenn Boutique Hotel (Legacy Property Group, LLC)	The renovation of the historic Glenn Building into a 10-story boutique hotel with 110 guest rooms, restaurant, roof-top terrace, fitness center and meeting space	<ul style="list-style-type: none"> <li>• Pavement rehabilitation</li> <li>• Sidewalk enhancements</li> <li>• Signage and landscaping</li> <li>• Lighting</li> </ul>
Historic Westside Village (Trammell Crow Company and H.J. Russell & Company)	A residential development consisting of 206 residential units, including 60 townhomes and 146 loft-style condominium units	<ul style="list-style-type: none"> <li>• Streetscapes, sidewalks and landscaping</li> <li>• Structured parking facility</li> <li>• Underground storm water retention facility</li> <li>• Easement relocation</li> <li>• Public gathering space</li> </ul>

**OTHER USES OF SERIES 2005 BOND PROCEEDS**

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2005 BOND PROCEEDS
Centennial Olympic Park Parking Deck Acquisition	The purchase of an option from the City of Atlanta and Fulton County Recreation Authority requiring the Authority to transfer to the City, upon demand of the City, an approximately 2,000 space public parking garage located at Philips Arena on Centennial Drive	

NAME (Developer)	DESCRIPTION	USAGE OF SERIES 2005 BOND PROCEEDS
Atlanta Public Schools and Neighborhood Projects		
Alexander Street Water Main Project		

**DESCRIPTION OF SERIES 2008 PROJECTS**

NAME (Private Developer)	DESCRIPTION	USAGE OF SERIES 2008 BOND PROCEEDS
45 Allen Plaza (45 Allen Plaza Development, LLC)	The redevelopment of a long vacant car dealership into a 28 story full service boutique hotel with approximately 76 luxury condos.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to: <ul style="list-style-type: none"> <li>• Site infrastructure</li> <li>• Structured parking</li> <li>• Environmental remediation</li> <li>• Streetscapes, sidewalks and landscaping</li> </ul>
Castleberry Point (Castleberry Point Development LLC)	The construction of a 4 story mixed used retail and residential development with approximately 35,600 square feet of retail space on the ground level and approximately 112 condominiums.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to structured parking.
Historic Westside Village: Retail Phase Development (Atlanta Westside Village Partners II, LLC)	The construction of the retail phase of that certain mixed use projected commonly known as Historic Westside Village which will include approximately 30,844 square feet of retail space.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to: <ul style="list-style-type: none"> <li>• Demolition &amp; site preparation</li> <li>• Utility installation</li> <li>• Mayson Turner Road realignment</li> <li>• Sidewalks, streetscape and landscape</li> </ul>

NAME (Private Developer)	DESCRIPTION	USAGE OF SERIES 2008 BOND PROCEEDS
Technology Enterprise Park Phase 1 (TUFF TEPB LLC and VLP 3, LLC)	The construction of 2 office buildings dedicated to bioscience and technology research and development, one containing approximately 126,760 square feet and the other containing approximately 46,120 square feet.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to: <ul style="list-style-type: none"> <li>• Site infrastructure</li> <li>• Site preparation</li> <li>• Streetscapes, sidewalk and landscaping</li> </ul>
Center for Civil and Human Rights (National Center for Civil and Human Rights, Inc.)	The construction of an approximately 100,000 square foot museum, which will include exhibition space, meeting facilities, performance space, dining facilities and retail space.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to: <ul style="list-style-type: none"> <li>• Site infrastructure</li> <li>• Building design</li> <li>• Building construction</li> </ul>
Andrew Young Tribute in Walton Spring Park	An approximately 0.18 acre garden park redevelopment and streetscaping.	Various Redevelopment Costs incurred in connection with such Series 2008 Project, including, without limitation, Redevelopment Costs attributable to: <ul style="list-style-type: none"> <li>• Park redevelopment</li> <li>• Streetscapes</li> </ul>
Downtown Traffic Signal Updates	The upgrading of traffic signals at 47 intersections in downtown Atlanta.	Various Redevelopment Costs incurred in connection with such Series 2008 Project.
Fairlie Poplar Streetscape Phase III - Utility Relocation	Utility relocation and coordination.	Various Redevelopment Costs incurred in connection with such Series 2008 Project.
West Peachtree Place Two Way Conversation	The addition of three intersections to correct vehicle circulation in the West Peachtree Place area.	Various Redevelopment Costs incurred in connection with such Series 2008 Project.
Neighborhood Projects	Those redevelopment projects approved subsequent to the issuance of the Series 2008 Bonds by The Atlanta Development Authority and the Westside TAD Neighborhood Advisory Board pursuant to The Atlanta Development Authority's policies and procedures (such projects, "The Neighborhood Projects"), The Neighborhood Projects are required to be located within the Westside TAD Neighborhood Area (as defined by the City).	Various Redevelopment Costs incurred in connection with such Neighborhood Projects.



**EXHIBIT B**

**FORM OF CERTIFICATE OF THE CITY**

Wells Fargo Bank, National Association  
360 Interstate North Parkway, S.E.  
Suite 500, MAC G0147-054  
Atlanta, Georgia 30339

RE: \$14,995,000 in original principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2001

and

\$82,565,000 in original principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A and Series 2005B

and

\$63,760,000 in original principal amount of City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2008

Ladies and Gentlemen:

The undersigned, being the Chief Financial Officer of the City of Atlanta, Georgia (the "City"), pursuant to Sections 5.04 and 5.10 of the Amended and Restated Continuing Covenants Agreement (the "Agreement"), dated as of [\_\_\_\_\_] 1, 2018, between the City and Wells Fargo Bank, National Association (the "Majority Holder"), entered into in connection with the issuance of the above-referenced bonds, does hereby certify to the Majority Holder as follows. The capitalized terms used in this certificate shall have the meaning set forth in the Agreement.

- 1. The Historic Debt Service Coverage Ratio for the Fiscal Year \_\_\_\_\_ is as follows:

Table A

Tax Allocation Increment	\$ _____
Interest Income on the Debt Service Reserve Fund	_____
Debt Service Reserve Fund withdrawals to pay Bonds	_____
TOTAL A	\$ _____

Table B

Annual Debt Service for Series 2001, 2005 and 2008 Bonds	\$ _____
Administrative Costs	_____
TOTAL B	\$ _____

Historic Debt Service Coverage Ratio = Total A \$ \_\_\_\_\_ divided by Total B \$ \_\_\_\_\_ = - :1.00.

- 2. The Excess Increments are the difference between (A) and (B) in item 1 above:

The amount shown as (A) above: \$ \_\_\_\_\_

Less the amount shown as (B) above: \$ \_\_\_\_\_

Excess Increments \$ \_\_\_\_\_

3. The transfer of \$ \_\_\_\_\_ of the Excess Increments to the Excess Increment Fund, to be used for purposes as described in Section 5.04 will result in a continued balance in the Supplemental Reserve Fund of \$ \_\_\_\_\_, which is no less than the greater of 50% of actual Payment Obligations and Administrative Costs for the prior Fiscal Year or \$5,000,000.

This \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Chief Financial Officer,  
City of Atlanta, Georgia

**EXHIBIT C**

[ \_\_\_\_\_ ] \_\_, 20[\_\_]

City of Atlanta  
Atlanta City Hall  
55 Trinity Avenue  
Atlanta, GA  
Attention: Mayor and City Council

Hunton Andrews Kurth LLP, Bond Counsel  
Bank of America Plaza, St 4100  
600 Peachtree Street, N.E.  
Atlanta, GA

Re: City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2001, Series 2005A, Series 2005B and Series 2008

Ladies and Gentlemen:

[ \_\_\_\_\_ ] (the "Purchaser") has agreed to purchase the captioned City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2001, Series 2005A, Series 2005B and Series 2008. The City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2001 Bonds (the "Series 2001 Bonds"), the City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2005A (the "Series 2005A Bonds"), the City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2005B (the "Series 2005B Bonds") and the City of Atlanta, Georgia Tax Allocation Variable Rate Bonds (Westside Project), Series 2008 (the "Series 2008 Bonds" and together with the Series 2001 Bonds, the Series 2005A Bonds and the Series 2005B Bonds, the "Bonds"). The Bonds were issued by the City of Atlanta, Georgia (the "City") in the Long Term Rate Period as set forth in the Amended and Restated Indenture of Trust, dated as of [ \_\_\_\_\_ ] 1, 2018, as amended and supplemented from time to time, between the City and The Bank of New York Mellon, as trustee (the "Indenture"). All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Indenture. The undersigned, an authorized officer of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bonds;
2. The Purchaser is aware that the conduct of the affairs of the City involve certain economic variables and risks that could adversely affect the security of the investment in the Bonds;
3. The Purchaser is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1993 Act"), and is able to bear the economic risks of such investment;
4. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement containing material information with respect to the City and the Bonds are being issued, and that, in due diligence, it has made its own inquiry and analysis with respect to the City, the Bonds, and the security therefor, and other material factors affecting the

security for and payment of the Bonds.

5. The Purchaser acknowledges that it has either been supplied with or has access to information, including financial statements and other financial information, regarding the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Bonds and the security therefore, so that a reasonable investor, it has been able to make its decision to purchase the Bonds;

6. The Purchaser understands that the Bonds (i) are not registered under the 1933 Act and are not registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) are not listed on any stock or other securities exchange, and (iii) carry no rating from any rating agency; and

7. The Purchaser agrees that it will not sell, transfer, assign or otherwise dispose of the Bonds or such ownership interests therein (1) unless (a) it obtains from the purchaser and delivers to the City and the Trustee an agreement similar in form and substance to this agreement or (b) it obtains from the purchaser and delivers to the City and the Trustee a written acknowledgment that such purchaser is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act and (2) except in compliance with the applicable provisions of the 1933 Act, the Securities Exchange Act of 1934, as amended (the "1934 Act"), any rules and regulations promulgated under either the 1933 Act or the 1934 Act, and the applicable securities laws of any other applicable jurisdiction, and in connection therewith, the Purchaser agrees that it shall furnish to any purchaser of the Bonds all information required by applicable law.

The Purchaser understands that the scope of engagement of Bond Counsel with respect to the Bonds has been limited to matters set forth in their opinion based on their view of such legal proceedings as they deem necessary to approve the validity of the Bonds and the tax-exempt status of interest thereon.

**[Purchaser]**

BY: \_\_\_\_\_  
Name:  
Title:

(Investment Letter)

**Summary report:**  
**Litéra® Change-Pro TDC 7.5.0.235 Document comparison done on**  
**10/22/2018 8:46:04 AM**

<b>Style name:</b> Firm Standard	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://EMF_US/HW_US/71190383/1	
<b>Modified DMS:</b> iw://EMF_US/HW_US/71190383/2	
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>5</b>