City of Fairburn City Council
Agenda

November 27, 2023
6:30 PM

The Honorable Mayor Mario Avery

The Honorable Mayor Pro-Tem LInda J. Davis
The Honorable Alex Heath
The Honorable Hattie Portis-Jones
The Honorable Pat Pallend
The Honorable Ulysses J. Smallwood
The Honorable James Whitmore

Mr. Tony Phillips	City Administrator
Mr. Rory Starkey	City Attorney
Ms. Brenda B. James	City Clerk

I. Meeting Called to Order: The Honorable Mayor Avery

II. Roll Call: City Clerk

III. Invocation:

IV. Adoption of the City Council Agenda:

V. Regular Agenda Items:

1. **Resolution with Respect to Downtown Development Authority of Fairburn Revenue Refunding Bond**

   Recommendation: Request for Mayor and Council to approve the Resolution of the City of Fairburn with respect to Downtown Development Authority of Faiburn Revenue Refunding Bond (Educational Campus Project) Series 2017 in the amount of $3,890,000 and authorize an amendment to the Project Lease Agreement. **(City Attorney)**

2. **Resolution to submit a Proposed Local Act for the 2024 General Assemly for the Public Facilities Authority**

   Recommendation: Request Mayor and Council approval to submit a proposed Local Act for the 2024 General Assembly to create the Public Facilities Authority of the City of Fairburn. **(City Attorney)**

VI. Adjournment:

When an Executive Session is required, one will be called for for the following Issues:
(1) Personnel (2) Real Estate or **(3) Litigation**

CITY OF FAIRBURN
CITY COUNCIL AGENDA ITEM

SUBJECT: Resolution with Respect to Downtown Development Authority of Fairburn Revenue Refunding Bond

ITEM TYPE: Resolution

SUBMITTED: 11/21/2023 **WORK SESSION:** N/A **COUNCIL MEETING:** 11/27/2023

DEPARTMENT: City Attorney

BUDGET IMPACT: N/A

PUBLIC HEARING: No

PURPOSE:
Refunding Bond Educational Campus Project

HISTORY:
The Downtown Development Authority of Fairburn issued on September 11, 2011 its $15,280,000 Downtown Development Authority of Fairburn Revenue Bonds (Educational Campus Project).

FACTS AND ISSUES:
N/A

FUNDING SOURCE:
N/A

RECOMMENDED ACTION:
Request for Mayor and Council to approve the Resolution of the City of Fairburn with respect to Downtown Development Authority of Faiburn Revenue Refunding Bond (Educational Campus Project) Series 2017 in the amount of $3,890,000 and authorize an amendment to the Project Lease Agreement.

ATTACHMENTS:
1. 2023 City of Fairburn Authorizing Resolution--Fairburn Educational Campus Partial Refunding(43675483.1) - 11.21.23_c

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAIRBURN WITH RESPECT TO DOWNTOWN DEVELOPMENT AUTHORITY OF FAIRBURN REVENUE REFUNDING BOND (EDUCATIONAL CAMPUS PROJECT), SERIES 2023 IN AN AMOUNT NOT TO EXCEED $4,000,000 AND TO AUTHORIZE AN AMENDMENT TO PROJECT LEASE AGREEMENT

WHEREAS, the Downtown Development Authority of Fairburn (the "Authority"), pursuant to its Bond Resolution adopted June 30, 2011, as supplemented by a Supplemental Resolution adopted September 8, 2011 (together, the "2011 Resolution") has previously issued on September 11, 2011 its $15,280,000 Downtown Development Authority of Fairburn Revenue Bonds (Educational Campus Project), Series 2011 (the "Series 2011 Bonds") for the purpose of (i) refunding the Development Authority of Fairburn Revenue Bond (Educational Campus Project), Series 2008, (ii) refinancing the acquisition, construction and installation of an educational campus with parking and related facilities, for rental principally to governmental or nonprofit educational institutions (the "Original Project"), and (iii) financing the acquisition, construction and installation of additions and improvements to the Original Project (collectively, the "New Projects" and, together with the Original Project, the "Project"); and

WHEREAS, the City of Fairburn, Georgia (the "City") and the Authority entered into that certain Project Lease Agreement, dated as of September 1, 2011 (the "Original Project Lease Agreement"), pursuant to which the City agreed to rent the Project and pay rental payments in an amount equal to the principal of and interest on the Series 2011 Bonds and pledged its full faith and credit and taxing power as security for such rental payments; and

WHEREAS, the Issuer, pursuant to its Second Supplemental Bond Resolution adopted June 7, 2017 (the "2017 Resolution" and the 2011 Resolution as supplemented by the 2017 Resolution are hereinafter referred to as the "Original Resolution"), issued its Revenue Refunding Bond (Educational Campus Project), Series 2017, in the principal face amount of $13,125,000 (the "Series 2017 Bond") to advance refund and defease the Series 2011 Bonds maturing July 1, 2022 through July 1, 2033, leaving the Series 2011 Bonds maturing July 1, 2018 through July 1, 2021 outstanding; and

WHEREAS, the City and the Issuer entered into an Amendment to the Original Project Lease Agreement, dated as of October 1, 2017 (the "First Amendment to Project Lease Agreement") to provide for rentals to produce Revenues to the Issuer sufficient to make payments coming due on the 2011 Bonds remaining outstanding as well as the Series 2017 Bond; and

WHEREAS, the Series 2011 Bonds have all been paid in full and none of the Series 2011 Bonds currently remains outstanding; and

WHEREAS, the Authority is authorized and empowered under and pursuant to the provisions of Article 3 of Chapter 82 of Title 36, as amended, of the Official Code of Georgia Annotated (the "Revenue Bond Law") to issue revenue bonds to refund or refinance, in whole or in part, all obligations or debt of any nature, including outstanding revenue bonds against any existing undertaking or combination thereof or its anticipated revenue; and

WHEREAS, in order to achieve debt service deferral and relief to the City, the City now desires and has requested that the Issuer issue its Revenue Refunding Bond (Educational Campus Project), Series 2023 (the "Series 2023 Bond"), in the principal face amount not to exceed $4,000,000, to currently refund that portion of the principal of the Series 2017 Bond subject to mandatory redemption on July 1, 2024 through July 1, 2027 (the "Series 2017 Refunded Portion"), leaving the principal amount of the Series 2017 Bond subject to mandatory redemption on July 1, 2028 through July 1, 2033 outstanding (the "Series 2017 Outstanding Portion"); and

WHEREAS, the Authority proposes to issue, sell and deliver the Series 2023 Bond for the purpose of refunding the Series 2017 Refunded Portion, including paying interest on the Series 2017 Refunded Portion through the date of redemption, and paying costs of issuance of the Series 2023 Bond; and

WHEREAS, the Authority proposes to issue, sell and deliver the Series 2023 Bond pursuant to the Original Resolution, as supplemented by the Third Supplemental Bond Resolution adopted by the Authority on November 27, 2023 (the "Third Supplemental Bond Resolution" and the Original Resolution as supplemented by the Third Supplemental Bond Resolution, the "Bond Resolution"); and

WHEREAS, the City Council has determined to approve the issuance of the Series 2023 Bond as provided in the Bond Resolution;

WHEREAS, Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the City and the Authority desire to enter into that certain Second Amendment to Project Lease Agreement, dated as of December 1, 2023 (the "Second Amendment to Project Lease Agreement"), to provide, among other things, that the City agrees to rent the Project and pay rental payments (the "Rental Payments") in an amount equal to the principal of and interest on the Series 2023 Bond and the Series 2017 Outstanding Portion, and pledges its full faith and credit and taxing power as security for such rental payments.

NOW, THEREFORE, BE IT RESOLVED, that the issuance of the Series 2023 Bond by the Authority on behalf of the City pursuant to the plan of financing described in the Bond Resolution for the benefit of the City is hereby in all respects approved; and

BE IT FURTHER RESOLVED, that the execution, delivery and performance of the Second Amendment to Project Lease Agreement is hereby authorized. The Mayor or Mayor Pro Tem in the Mayor's absence, and the City Clerk are hereby authorized to execute and deliver the Second Amendment to Project Lease Agreement, which Second Amendment to Project Lease Agreement shall be in substantially the form attached hereto as Exhibit "A", with such minor changes, insertions or omissions as may be approved by Mayor or Mayor Pro Tem in the Mayor's absence, and the City Clerk, and the execution of the Second Amendment to Project Lease Agreement by the Mayor or Mayor Pro Tem in the Mayor's absence, and the City Clerk, as hereby authorized, shall be conclusive evidence of any such approval.

ADOPTED, this 27th day of November, 2023.

CITY OF FAIRBURN, GEORGIA

By:_______________________________________
Mayor

Attest:

____
City Clerk

(SEAL)

SGR/43675483.1

Exhibit "A"

FORM OF SECOND AMENDMENT TO PROJECT LEASE AGREEMENT

(Attached)

Cross-Reference to:
Deed Book 50400, Page 428
Deed Book 58064, page 62
Fulton County, Georgia Records

SECOND AMENDMENT TO
PROJECT LEASE AGREEMENT

Between

DOWNTOWN DEVELOPMENT AUTHORITY OF FAIRBURN

And

THE CITY OF FAIRBURN, GEORGIA

Dated as of December 1, 2023

After Recording, Return to:
Benjamin J. Brooks, Esq.
Smith, Gambrell & Russell, LLP
1105 W. Peachtree Street, NE
Suite 1000
Atlanta, GA 30309

SGR/43675679.1

TABLE OF CONTENTS

SECOND AMENDMENT TO PROJECT LEASE AGREEMENT

This Second Amendment to Project Lease Agreement (this "Amendment"), dated as of December 1, 2023, by and between DOWNTOWN DEVELOPMENT AUTHORITY OF FAIRBURN (the "Authority"), a public body corporate and politic created and existing under the laws of the State of Georgia, and CITY OF FAIRBURN (the "City"), a municipal corporation created and existing under the laws of the State of Georgia;

W I T N E S S E T H:

WHEREAS, the City and the Authority entered into the Project Lease Agreement, dated as of September 1, 2011 (the "2011 Project Lease Agreement Agreement), recorded at Deed Book 50400, Page 428 *et seq.*, in the records of the Clerk of the Superior Court of Fulton County, Georgia, as amended by that certain Amendment to Project Lease Agreement, dated as of October 1, 2017 (the "2017 Amendment"), recorded at Deed Book 58064, Page 62 *et seq.*, in the records of the Clerk of the Superior Court of Fulton County, Georgia (the 2011 Agreement as amended by the 2017 Amendment are hereinafter referred to as the "Original Agreement") whereby the City leased from the Authority the "Project" described therein; and

WHEREAS, the Authority, pursuant to a Bond Resolution, adopted June 30, 2011, as supplemented September 8, 2011 (the "2011 Bond Resolution"), assigned and pledged the rentals of the City to the payment of its $15,280,000 original principal amount Refunding Revenue Series 2023 Bond (Education Campus Project), Series 2011 (the "Series 2011 Bonds"); and

WHEREAS, the Authority, pursuant to Section 5.02 of the 2011 Resolution and the other provisions of its Second Supplemental Bond Resolution, adopted September 7, 2017 (the "2017 Bond Resolution" and, together with the 2011 Bond Resolution as supplemented by the 2017 Bond Resolution, being referred to as the "Original Resolution"), issued its $13,125,000 original principal amount Refunding Revenue Bond (Educational Campus Project) Series 2017 (the "2017 Bond") for the purpose of advance refunding and defeasing the Series 2011 Bonds maturing July 1, 2022 through July 1, 2031, leaving the Series 2011 Bonds maturing July 1, 2017 through July 1, 2021 outstanding; and

WHEREAS, the Authority and the City entered into an Amendment to Project Lease Agreement, dated as of October 1, 2017 (the "First Amendment to Project Lease Agreement" and the 2011 Project Lease Agreement as amended by the First Amendment to Project Lease Agreement, are hereinafter referred to as the "Original Agreement") in order to provide that Rentals payable thereunder would be sufficient to pay the Series 2017 Bond as well as the Series 2011 Bonds remaining outstanding; and

WHEREAS, the Series 2011 Bonds have all been paid in full and none of the Series 2011 Bonds currently remains outstanding; and

WHEREAS, the City has now requested that the Issuer issue, pursuant to the Original Resolution, as supplemented by a Third Supplemental Bond Resolution adopted by the Issuer on

November __, 2023 (the "2023 Bond Resolution" and the Original Resolution as supplemented by the 2023 Bond Resolution is hereinafter referred to as the "Bond Resolution"), its Revenue Refunding Bond (Educational Campus Project), Series 2023, in the principal face amount not to exceed $4,000,000 (the "Series 2023 Bond") to currently refund that portion of the principal of the Series 2017 Bond subject to mandatory redemption on July 1, 2024 through July 1, 2027 (the "Series 2017 Refunded Portion"), leaving the principal amount of the Series 2017 Bond subject to mandatory redemption on July 1, 2028 through July 1, 2033 outstanding (the "Series 2017 Outstanding Portion"); and

WHEREAS, the City and the Authority desire hereby to amend the Original Agreement to provide that the Rentals payable thereunder shall be sufficient to pay debt service on the Series 2023 Bond and the Series 2017 Outstanding Portion, taking into account the redemption and refunding of the Series 2017 Refunded Portion, and for related purposes, to confirm and reaffirm the Original Agreement, as amended hereby, and to acknowledge the assignment and pledge of the Original Agreement, as amended hereby, by the Authority for the purpose of providing for the payment of the Series 2023 Bond (the "Original Agreement, as amended by this Amendment being referred to as the "Agreement"); and

WHEREAS, the City desires to continue to lease the Project as an educational campus, and obtain an option to purchase the Additional Services (as defined herein) from the Authority, subject to the terms and conditions of and for the purposes set forth in the Agreement; and

WHEREAS, the Authority and the City are authorized under the Constitution and laws of the State of Georgia to provide for the financing or refinancing, acquisition and operation of buildings and property for educational purposes and parking, and to enter into the Agreement for the purposes set forth herein; and

WHEREAS, the Authority and the City are authorized to provide for the use of "undertakings" (as such term is defined in the Revenue Bond Law (as defined herein) by sublease or rental agreement and to set rates and rentals for such use pursuant to the provisions of the Revenue Bond Law, including particularly O.C.G.A. §§ 36-82-62(2) and (6) and O.C.G.A. § 36-82-65.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. **Definitions**. The definitions of certain words and terms used in the Agreement are amended and supplemented by the definitions contained in the "WHEREAS" clauses of this Amendment. Other definitions used in the Original Agreement shall have the same meanings when used in this Amendment.

Section 1.02. **Construction of Certain Terms**. For all purposes of the Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(1) The use of the masculine, feminine or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine or neuter gender, as appropriate.

(2) "The Agreement" means the Agreement as originally executed or as it may from time to time be supplemented or amended by one or more supplements thereto entered into pursuant to the applicable provisions of the Agreement.

(3) All references in this instrument to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument. The words "herein," "hereof," and "hereunder" and other words of similar import refer to this Amendment as a whole and not to any particular Article, Section or other subdivision.

(4) The terms defined in this Amendment shall have the meaning assigned to them in this Amendment and include the plural as well as the singular.

(5) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles on and as of the date of this instrument.

Section 1.03. Table of Contents; Titles and Headings. The table of contents, the titles of the articles and the headings of the sections of the Agreement are solely for convenience of reference, are not a part of the Agreement, and shall not be deemed to affect the meaning, construction or effect of any of its provisions.

ARTICLE II

REPRESENTATIONS AND UNDERTAKINGS

Section 2.01. Representations by the Authority. The Authority makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Creation and Authority. The Authority is a public body corporate and politic duly created and validly existing under the Constitution and laws of the State, in particular the Act. The Authority has all requisite power and authority (i) to issue the Series 2023 Bond and to finance and refinance the costs of acquisition, construction and installation of the Project, (ii) to lease and sell the Project to the City, (iii) to provide the Additional Services, and (iv) to enter into, perform its obligations under, and exercise its rights under the Bond Documents. Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 authorizes the Authority (1) to contract for any period not exceeding fifty (50) years with any public body corporate and politic or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, if such contract deals with activities, services or facilities that the contracting parties are authorized by law to undertake or provide, and (2) in connection with any such contract to convey any existing facilities or equipment to any public body corporate and politic or public authority.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending or, to the knowledge of the Authority, after making due inquiry with respect thereto, threatened against or affecting the Authority in any court or by or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by the Agreement or which, in any way, would adversely affect the validity or enforceability of the Series 2023 Bond, the Bond Documents or any agreement or instrument to which the Authority is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the Authority aware of any facts or circumstances presently existing which would form the basis for any such actions, suits or proceedings.

(c) Agreements Are Legal and Authorized. The execution and delivery by the Authority of the Series 2023 Bond and the Bond Documents, the passage and approval of the Bond Resolution, the compliance by the Authority with all of the provisions of each thereof, and the adoption of the Bond Resolution (i) are within the purposes, powers and authority of the Authority, (ii) have been done in full compliance with the provisions of applicable laws and have been approved by the Governing Body of the Authority and are legal and will not conflict with or constitute on the part of the Authority a violation of or a breach of or a default under any enabling legislation, indenture, mortgage, security deed, pledge, note, lease, loan or installment sale agreement, contract or other agreement or instrument to which the Authority is a party or by which the Authority or its properties are otherwise subject or bound, or any license, judgment, decree, law, statute, order, writ, injunction, demand, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of the Authority. The Agreement has been duly and validly executed and delivered by the Authority, is in full force and effect as to the Authority, and constitutes the legal, valid, binding and enforceable obligations of the Authority, enforceable in accordance with its terms. The Series 2023 Bond have been duly and validly authorized and issued and constitute a valid and binding obligation of the Authority enforceable in accordance with their terms.

(d) Governmental Consents. Neither the nature of the Authority nor any of its activities or properties, nor any relationship between the Authority and any other Person, nor any circumstance in connection with the offer, issue, sale or delivery of the Series 2023 Bond is such as to require the consent, approval, permission, order, license or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Authority in connection with the execution, delivery and performance of the Agreement, and the Assignment or the consummation of any transaction therein contemplated, or the offer, issue, sale or delivery of the Series 2023 Bond, except as shall have been obtained or made and as are in full force and effect.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default under the Bond Resolution or that, with the lapse of time or with the giving of notice or both, would become such an Event of Default. The Authority is not in default or violation under applicable laws or under any enabling legislation or other agreement or instrument to which it is a party or by which it may be bound.

(f) No Prior Pledge. Neither the Agreement nor any of the payments or amounts to be received by the Authority thereunder have been or will be assigned, pledged or hypothecated in any manner or for any purpose or have been or will be the subject of a grant of a security interest by the Authority other than as provided in the Assignment.

(g) Compliance with Conditions Precedent to the Issuance of the Series 2023 Bond. All acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery by the Authority of the Series 2023 Bond do exist, have happened and have been performed in due time, form and manner as required by law; the issuance of the Series 2023 Bond, together with all other obligations of the Authority, does not exceed or violate any constitutional or statutory limitation, and the revenues, funds, property and amounts pledged to the payment of the principal of and premium, if any, and interest on, the Series 2023 Bond, as the same become due, have been calculated to be sufficient in amount for that purpose.

(h) Tax Certificate. The representations and warranties of the Authority set forth in the Tax and Non-Arbitrage Certificates, dated the respective dates of issuance and delivery of the Series 2023 Bond, are hereby incorporated herein and made a part hereof by this reference thereto, as if fully set forth herein, and are true and correct as of the date hereof.

(i) Disclosure. The representations of the Authority contained in the Agreement and any certificate, document, written statement or other instrument furnished by or on behalf of the Authority in connection with the transactions contemplated hereby do not contain any untrue statement of a material fact relating to the Authority and do not omit to state a material fact relating to the Authority necessary in order to make the statements contained herein and therein relating to the Authority not misleading. Nothing has come to the attention of the Authority that would materially and adversely affect or in the future may (so far as the Authority can now reasonably foresee) materially and adversely affect the Project by the Authority or any other transactions contemplated by the Agreement and the Bond Resolution that has not been set forth in the appropriate disclosure relating to the Series 2023 Bond or in the certificates, documents and instruments furnished by or on behalf of the Authority prior to the date of execution of the Agreement in connection with the transactions contemplated hereby.

Section 2.02. Representations by the City. The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Authority. The City is a municipal corporation validly existing under the laws of the State. The City has all requisite power and authority under the laws of the State to lease and purchase the Project and obtain the Additional Services from the Authority and to enter into, perform its obligations under, and exercise its rights under the Agreement. Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 authorizes the City (i) to contract for any period not exceeding fifty (50) years with any public body corporate and politic or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, if such contract deals with activities, services or facilities that the contracting parties are authorized by law to undertake or provide, and (ii) in connection with any such contract to convey any existing facilities or equipment to any public body corporate and politic or public authority. The City has, and does hereby, approve the issuance of the Series 2023 Bond by the Authority.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending or, to the knowledge of the City, after making due inquiry with respect thereto, threatened against or affecting the City in any court or by or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the properties, activities, prospects, profits, operations or condition (financial or otherwise) of the City, or the ability of the City to perform its obligations under the Agreement, or the transactions contemplated by the Agreement or which, in any way, would adversely affect the validity or enforceability of the Agreement or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the City aware of any facts or circumstances presently existing that would form the basis for any such actions, suits or proceedings. The City is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule or regulation of any court, governmental authority or arbitration board or tribunal.

(c) Agreement Is Legal and Authorized. The execution and delivery by the City of the Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof (i) are within the power, legal right and authority of the City, (ii) are legal and will not conflict with or constitute on the part of the City a violation of or a breach of or a default under, any enabling legislation, indenture, mortgage, security deed, pledge, note, lease, loan or installment sale agreement, contract or other agreement or instrument to which the City is a party or by which the City or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree or demand of any court or governmental agency or body having jurisdiction over the City or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate official action on the part of the Governing Body of the City. The Agreement is the valid, legal, binding and enforceable obligation of the City. The officials of the City executing the Agreement are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the City.

(d) Governmental Consents. Neither the City nor any of its activities or properties, nor any relationship between the City and any other Person, nor any circumstances in connection with the execution, delivery and performance by the City of its obligations under the Agreement or the offer, issue, sale or delivery by the Authority of the Series 2023 Bond, is such as to require the consent, approval, permission, order, license or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the City in connection with the execution, delivery and performance of the Agreement or the consummation of any transaction herein contemplated, or the offer, issue, sale or delivery of the Series 2023 Bond, except as shall have been obtained or made and as are in full force and effect and except as are not presently obtainable. The City will be able to obtain all such additional consents, approvals, permissions orders, licenses or authorizations of governmental authorities as may be required on or prior to the date the City is legally required to obtain the same.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default or that, with the lapse of time or with the giving of notice or both, would become an Event of Default. The City is not in default or violation in any material respect under any enabling legislation or other agreement or instrument to which it is a party or by which it may be bound.

(f) Compliance with Law. The City is not in violation of any laws, ordinances or governmental rules or regulations to which it or its properties are subject and has not failed to obtain any licenses, permits, franchises or other governmental authorizations (which are presently obtainable) necessary to the ownership of its properties or to the conduct of its affairs, which violation or failure to obtain might materially and adversely affect the properties, activities, prospects, profits and condition (financial or otherwise) of the City, and there have been no citations, notices or orders of noncompliance issued to the City under any such law, ordinance, rule or regulation.

(g) Restrictions on the City. The City is not a party to or bound by any contract, instrument or agreement, or subject to any other restriction, that materially and adversely affects its activities, properties, assets, operations or condition (financial or otherwise). The City is not a party to any contract or agreement that restricts the right or ability of the City to enter into the Agreement.

(h) Project Compliance. The Project complies or will comply with all presently applicable health, environmental and safety laws and all other applicable laws, rules and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the Project.

(i) Tax Certificate. The agreements, representations and warranties of the City set forth in the Tax and Non-Arbitrage Certificates, dated the respective dates of issuance and delivery of the Series 2023 Bond, are hereby incorporated herein and made a part hereof by this reference thereto, as if fully set forth herein, and are true and correct as of the date hereof.

(j) Other Contracts. The City represents that there is not presently in force and effect any other contract or agreement which obligates the City to levy an annual ad valorem tax on all taxable property located within the territorial limits of the City, as now existent and as the same may hereafter be extended to provide revenues to fulfill the City's obligations under such contract or agreement.

Section 2.03. Reliance by Bondholder. The Authority and the City acknowledge and agree that these representations and warranties are made to induce the Bondholder to purchase the Series 2023 Bond, and that such representations and warranties and any other representations and warranties made by the Authority and the City in the Bond Documents are made for the benefit of the Bondholder and may be relied upon by the Bondholder.

ARTICLE III

ISSUANCE OF THE Series 2023 BOND

Section 3.01. Agreement to Issue the Series 2023 Bond; Application of Proceeds. In order to provide funds to refund and redeem the Series 2017 Refunded Portion and pay the costs associated therewith, the Authority agrees to issue and deliver the Series 2023 Bond to the purchaser thereof and to apply the proceeds thereof as provided in the 2023 Bond Resolution.

Section 3.02. Reaffirmation. The provisions of Sections 3.03 and 3.04 of the Original Agreement are ratified and reaffirmed as applicable to the Series 2023 Bond.

ARTICLE IV

LEASE OF THE PROJECT AND PROVISION OF ADDITIONAL SERVICES; SECURITY; TITLE

Section 4.01. Reaffirmation. The provisions of Article IV of the Original Agreement are ratified and reaffirmed in the light of the issuance of the Series 2023 Bond.

ARTICLE V

EFFECTIVE DATE OF THE AGREEMENT; DURATION OF TERM; PAYMENT PROVISIONS

Section 5.01. Effective Date of the Agreement; Duration of Term. Section 5.01 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.02. Possession. Section 5.02 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.03. Rentals and Other Amounts Payable. Section 5.03 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.04. Option to Prepay the Rentals and Redeem the Series 2023 Bond. Section 5.04 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.05. Place of Rental Payments. Section 5.05 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.06. Obligations of City Hereunder Absolute and Unconditional. Section 5.06 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.07. Tax Levy to Pay Payments under the Agreement; Lien on Amounts Levied. Section 5.07 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

Section 5.08. Security for the Series 2023 Bond. Section 5.08 of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

ARTICLE VI
SPECIAL COVENANTS OF THE CITY

Section 6.01. <u>Reaffirmation</u>. Article VI of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond.

ARTICLE VII
SPECIAL COVENANTS OF THE AUTHORITY AND THE CITY

Section 7.01. <u>Reaffirmation</u>. Sections 7.01, 7.02, 7.03, 7.04 and 7.08 of the Original Agreement are ratified and reaffirmed in accordance with their terms, in the light of the issuance of the Series 2023 Bond.

Section 7.02. <u>Continuing Disclosure</u>. Section 7.05 of the Original Agreement is modified to reflect that the Series 2017 Bond and the Series 2023 Bond currently outstanding are not subject to continuing disclosure. Accordingly, said Section 7.05 is hereby restated to read as follows:

> "While any Bonds which are subject to continuing disclosure obligations are outstanding, the City shall abide by the provisions of any continuing disclosure or similar agreement entered into with respect to such Bonds."

Section 7.03. <u>Tax Covenants</u>. The Authority and the City acknowledge that portions of the Project have been subleased pursuant to a lease agreement by and between the City and Brenau University, Inc., a tax-exempt entity under Section 501(c)(3) of the Code, and a lease agreement by and between the City and the Georgia Military College, a public body corporate and politic of the State of Georgia, and may be subleased to Atlanta Metropolitan State College or other units of the Board of Regents of the State of Georgia or the Technical College System of Georgia (together with any further subleases, the "Project Subleases"). The City may amend, renew or terminate any of the Project Subleases, enter into further subleases for the Project in furtherance of its use as an educational campus or other lawful purposes, but shall first take all appropriate steps to assure and maintain the exclusion of interest on the Bonds (other than any of the Bonds purposely issued on a taxable basis) from gross income of the owners thereof for federal income taxation purposes, including consultation with Bond Counsel. The Authority and the City covenant that they will not take or omit to take any action nor permit any action to be taken or omitted that would cause the interest on the Bonds (other than any of the Bonds purposely issued on a taxable basis) to become includable in the gross income of any owner thereof. The Authority and the City further covenant and agree to comply with their respective representations and certifications it made in the Tax Certificate dated the date of issuance and delivery of each of the Bonds and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

Section 7.04. <u>Financial Statements</u>. Within 270 days of the end of each of its fiscal years, the City will provide to the holder of the Series 2023 Bond its audited financial statements.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Reaffirmation. Article VIII of the Original Agreement is ratified and reaffirmed in accordance with its terms, in the light of the issuance of the Series 2023 Bond; provided, however, that references to the Bond Insurer shall be disregarded, as a result of the payment in full of the Series 2011 Bonds.

Section 8.02. Default Costs. After the occurrence of an Event of Default hereunder or under the Bond Resolution, the City shall pay to the holder of the Series 2023 Bond its expenses of collection, including reasonable attorneys' fees actually incurred, at all levels of the proceedings, whether incurred in connection with collection, bankruptcy, proceedings, trial, appeal or otherwise.

ARTICLE IX
MISCELLANEOUS

Section 9.01. Reaffirmation. Sections 9.01 through 9.08 of the Original Agreement are ratified and reaffirmed in accordance with their terms, in the light of the issuance of the Series 2023 Bond.

Section 9.02. Bond Insurer Provisions. The Series 2011 Bonds have been paid in full, and all provisions of the Agreement with respect to bond insurance for the Series 2011 Bonds are inapplicable and disregarded.

[Executions on Following Page]

IN WITNESS WHEREOF, the Authority has executed this Amendment by causing its name to be hereunto subscribed by its Chairman and by causing the official seal of the Authority to be impressed hereon and attested by its Secretary; and the City has executed this Amendment by causing its name to be hereunto subscribed by its Mayor and by causing the official seal of the City to be impressed hereon and attested by its Interim City Clerk; all being done as of the day and year first above written.

DOWNTOWN DEVELOPMENT AUTHORITY OF FAIRBURN

Signed, sealed and delivered in the presence of:

____
Unofficial Witness

By:____________________________________
Chairman

____
Notary Public

(SEAL)

Attest:

My Commission Expires:

[NOTARIAL SEAL]

____
Secretary

THE CITY OF FAIRBURN, GEORGIA

Signed, sealed and delivered in the presence of:

____
Unofficial Witness

By: ____________________________________
Mayor

____
Notary Public

(SEAL)

Attest:

My Commission Expires:

[NOTARIAL SEAL]

____
Interim City Clerk

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1

All that tract or parcel of land lying and being in Land Lot 66 of the 9F District of Fulton County, Georgia, being all of Lots 1, 2 and 3, according to a plat of FAIRBURN EDUCATIONAL CAMPUS, prepared by Integrated Science & Engineering, dated January 1, 2008, containing 4.06 acres, and being more particularly described as follows:

BEGINNING at the intersection of the Southwest corner of Fairview Drive, a 40 foot right-of-way and the Easterly side of Barton Street, and continuing along the Southerly side of Fairview Drive, a 40 foot right-of-way, N 61º20′13″ E a distance of 433.30 feet to a point at the intersection of Fairview Drive, a 40 foot right-of-way, with the Westerly side of Estes Street; thence leaving said Fairview Drive, a 40 foot right-of-way, and continuing South along the Westerly side of Estes Street, S 30˚16′07″ E a distance of 399.70 feet to a point at the intersection of Estes Street and the Northwest corner of West Broad Street (also US Highway 29 and State Route 14); thence leaving Estes Street and continuing Westerly along the Northerly side of West Broad Street (also US Highway 29 and State Route 14) S 60º35′29″ W a distance of 366.00 feet to a ¼" rebar iron pin found; thence continuing along West Broad Street (also US Highway 29 and State Route 14) S 60º35′29″ W a distance of 81.86 feet to a ¼" rebar iron pin found being the intersection of the Northerly side of West Broad Street (also US Highway 29 and State Route 14) and the Easterly side of Barton Street; thence leaving the Northerly side of West Broad Street and continuing Northerly along Barton Street N 28º15′46″ W a distance of 174.48 to a ¼" rebar iron pin found; thence N 28º08′27″ W a distance of 230.90 feet to the POINT OF BEGINNING.

Parcel 2

All that tract or parcel of land situate, lying and being in Land Lot 66 of District 9-F, in the City of Fairburn, Fulton County, Georgia and being more particularly described as follows:

Commence at the Point of Beginning, which point is located at the intersection of the Easterly Right-of-Way of Estes Street and the Southerly Right-of-Way of Fairview Drive (a 40' Right-of -Way) and from said point run along the Southerly Right-of-Way of Fairview Drive North 61°27'52" East a distance of 270.70 feet to an iron pin found; thence leaving said Right-of-Way run South 28°13'32" East a distance of 190.50 feet to an iron pin found; thence run North 61°10'19" East a distance of 248.97 feet to an iron pin found; thence run North 25°28'40" West a distance of 48.11 feet to an iron pin found; thence run North 61°38'17" East a distance of 191.15 feet to an iron pin found located on the Westerly Right-of-Way of Shaw Drive (a 50' Right-of-Way); thence run along the Westerly Right-of-Way of Shaw Drive South 16°10'15" East a distance of 259.85 feet to a point which point is located at the intersection of the Westerly Right-of-Way of Shaw Drive and the Northerly Right-of-Way of US 29/ SR 14 a/k/a West Broad Street (R/W Varies); thence run along the Northerly Right-of-Way of US 29/ SR 14 a/k/a West Broad Street South 60°54'25" West a distance of 494.57 feet to a point; thence leaving said

Right-of-Way run North 30°16’07” West a distance of 125.00 feet to a point; thence run South 60°54’25” West a distance of 150.00 feet to a point located on the Easterly Right-of-Way of Estes Street; thence run along the Easterly Right-of-Way of Estes Street North 30°16’07” West a distance of 277.04 feet to a point and the Point of Beginning; all as per Survey for the City of Fairburn, prepared by George T. White, R.L.S. No. 1929 of Integrated Science & Engineering, dated January 1, 2008, said Survey is incorporated herein by reference.

Parcel 3

All that tract or parcel of land lying and being in Land Lot 66 of the 9F District of Fulton County, formerly Campbell County, Georgia, containing 0.43 acres as shown on that certain plat of survey dated May 19, 2009, entitled "Boundary Survey for Mary Lou Wiebel, Betty Jean Rock and Sue Blackstock," prepared by Integrated Science & Engineering, and more particularly described as follows:

BEGINNING at the point of intersection of the north right of way of Estes Street and the west right-of-way of US 29/SR 14, West Broad Street (R/W Varies), running thence northwesterly along the north right-of-way of Estes Street, N 30°16'07" W a distance of 125.00 feet to an iron pin set; thence leaving said right-of-way run N 60°54'25" E a distance of 150.00 feet to an ½" rebar; thence run S 30°16'07" E a distance of 125.00 feet to an ½" rebar located at the west right-of-way of US 29/SR 14, West Broad Street; thence running southwesterly along the west right-of-way of US 29/SR 14, West Broad Street, S 60°54'25" W a distance of 150.00 feet to a point and the point of beginning.

EXHIBIT B

DESCRIPTION OF PROJECT

The educational campus located on the Premises described in Exhibit A hereto, which now includes buildings of approximately 53,356 square feet, including two original classroom buildings, an administration building, two auxiliary buildings and related facilities, and which shall include the New Projects referred to in the Original Agreement, consisting of the construction of an additional classroom building of approximately 25,000 square feet and the development or improvement of related parking facilities.

CERTIFICATE OF ADOPTION

The undersigned hereby certifies that the foregoing resolution was duly adopted at a meeting called and held by the Mayor and City Council on the date set forth in the foregoing, at which a quorum was present and acting throughout, and that said resolution has not been repealed, and is in full force and effect, and a copy of which is contained in the official records of the Mayor and City Council in my control.

____

City Clerk

[Official Seal]

CITY OF FAIRBURN
CITY COUNCIL AGENDA ITEM

SUBJECT: Resolution to submit a Proposed Local Act for the 2024 General Assemly for the Public Facilities Authority

ITEM TYPE: Resolution

SUBMITTED: 11/21/2023 **WORK SESSION:** N/A **COUNCIL MEETING:** 11/27/2023

DEPARTMENT: City Attorney

BUDGET IMPACT: N/A

PUBLIC HEARING: No

PURPOSE:
This Resolution is to submit a proposed Local Act for the 2024 General Assembly to create the Public Facilities Authority of the City of Fairburn.

HISTORY:
The City has developed a strategic plan for making various capital improvements within the City and desires to create the Public Facilities Authority of the City of Fairburn.

FACTS AND ISSUES:
The City desires to create the Public Facilities Authority of the City of Fairburn for the purpose of promoting the public good and general welfare of the citizens of the City, and of the state and financing and providing facilities, equipment, and services within the City, for sale to, lease or sublease to, or operation by any public body or any private person.

FUNDING SOURCE:
N/A

RECOMMENDED ACTION:
Request Mayor and Council approval to submit a proposed Local Act for the 2024 General Assembly to create the Public Facilities Authority of the City of Fairburn.

ATTACHMENTS:
1. Resolution Authorizing Local Act re Public Facilities Authority with exhibit - 11.21.23

STATE OF GEORGIA RESOLUTION NO:____________
COUNTY OF FULTON

A RESOLUTION AUTHORIZING THE MAYOR AND CITY COUNCIL TO SUBMIT A PROPOSED LOCAL ACT FOR THE 2024 GENERAL SESSION OF THE GEORGIA GENERAL ASSEMBLY TO CREATE "THE PUBLIC FACILITIES AUTHORITY OF THE CITY OF FAIRBURN"; TO REPEAL INCONSISTENT RESOLUTIONS; AND FOR OTHER RELATED PURPOSES.

W I T N E S S E T H:

WHEREAS, the City of Fairburn (the "City") is experiencing robust growth, resulting in the need for increased services to the residents, visitors and businesses within the City; and

WHEREAS, the City has developed a strategic plan for making various capital improvements within the City; and

WHEREAS, one method for financing capital improvements is through the use of a public facilities authority; and

WHEREAS, the City desires to create the Public Facilities Authority of the City of Fairburn for the purpose of promoting the public good and general welfare of the citizens of the City, and of the state and financing and providing facilities, equipment, and services within the City, for sale to, lease or sublease to, or operation by any public body or any private person; and

WHEREAS, the creation of a public facility authority must be authorized by a local act adopted by the Georgia General Assembly; and

WHEREAS, the Mayor and City Council, in the exercise of their sound judgment and discretion, after giving thorough thought to all implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined it to be in the best interest of the citizens of the City, for the City Administrator to submit a local act to the City's respective members in the Georgia House of Representative and the Georgia Senate for consideration during the 2024 Session of the Georgia General Assembly and that this Resolution be adopted.

NOW THEREFORE BE IT RESOLVED that the City Administrator is authorized to submit a proposed local act in substantially the form attached hereto as **Exhibit "A"** to the City's respective members in the Georgia House of Representative and the Georgia Senate for consideration during the 2024 Session of the Georgia General Assembly**.**

BE IT FURTHER RESOLVED, in the event any section, subsection, sentence, clause, or phrase of this Resolution shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions of the other sections, subsections, sentences, clauses or phrases of this Resolution, which shall remain in full force and effect as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part thereof. The City Council declares that it would have passed the remaining parts of this Resolution if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

BE IT FURTHER RESOLVED, this Resolution shall become effective immediately upon signature by the Mayor.

BE IT FINALLY RESOLVED, that any and all resolutions in conflict with this Resolution be and the same are hereby repealed, only to the extent of such conflict.

This ____ day of __________________, 2023.

____
Mario B. Avery, Mayor

ATTEST: APPROVED AS TO FORM:

____________________________ ____________________________________
Brenda B. James, City Clerk Rory K. Starkey, City Attorney

<u>EXHIBIT "A"</u>

AN ACT TO CREATE THE PUBLIC FACILITIES AUTHORITY OF THE CITY OF FAIRBURN (PROPOSED)

House Bill [_____]

By: Representatives [____]

A BILL TO BE ENTITLED

AN ACT

To create the Public Facilities Authority of the City of Fairburn; to provide for a short title and legislative findings; to confer powers and impose duties on the authority; to provide for the membership of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for vacancies; to provide for definitions; to provide for the issuance and sale of revenue bonds and other obligations and their sale, and use of proceeds from such sales; to provide for conditions for issuance of such obligations; to prohibit the pledge of credit for the payment of revenue bonds and other obligations; to provide for trust indentures and a sinking fund; to provide for payment of proceeds of revenue bonds and other obligations; to provide for remedies and protection of holders of revenue bonds and other obligations; to provide for refunding revenue bonds and other obligations; to provide for validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for the authority's purpose; to provide for charges; to provide for rules and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for supplemental powers; to provide for effect on other governments; to provide for liberal construction; to provide for severability; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Short title.

This Act shall be known and may be cited as the "Public Facilities Authority of the City of Fairburn Act."

SECTION 2.

Definitions.

As used in this Act, the following words and terms shall have the meaning specified unless the context or use clearly indicates a different meaning or intent:

(1) "Authority" means the Public Facilities Authority of the City of Fairburn created by this Act.

(2) "City" means the City of Fairburn, Georgia, or its successor.

(3) "Cost of the project" shall include:

(A) The cost of construction;

(B) The cost of all land and interests therein, properties, rights, easements, and franchises acquired;

(C) The cost of acquiring, constructing, or erecting buildings, improvements, materials, labor, and services;

(D) The cost of all fixtures, furnishings, machinery, and equipment;

(E) Issuance costs, including, but not limited to fees or discounts of underwriters or placement agents, the funding of reserve accounts, financing charges including interest prior to and during the construction or acquisition of any project and for up to one year after such project is placed into service and operational at the level intended;

(F) The cost of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses relating to a project or to the financing or refinancing of any project and other expenses necessary or incident to determining the feasibility or practicability of any project; and

(G) Administrative expenses relating to any project or the financing or refinancing thereof, and such other expenses as may be necessary or incident to the financing or refinancing of a project herein authorized, the acquisition, construction, renovation, reconstruction, or remodeling of a project, and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds or other obligations issued under the provisions hereof for any such project or projects and the proceeds of the sale of any contracts, lease agreements, or installment sales agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(4) "Obligations" means and includes revenue bonds, bond anticipation notes, other promissory notes, certificates of participation, custodial receipts, or other similar instruments creating interests in any contracts, lease agreements, or installment sales agreements or in the amounts payable to the authority, directly or indirectly, thereunder.

(5) "Private person" means any individual or any legal entity, other than a public body, whether operated for profit or not for profit.

(6) "Project" means any capital project located or to be located in the county, whether or not located in the city, that is determined by the authority to promote the public good or general welfare of the citizens of the city, of the county, or of the state, or any of its enterprises or systems, including, but not limited to, the acquisition, construction, renovation, improvement, extension, addition, or equipping within the county of:

(A) Utility systems and improvements, including without limitation water and sewer systems and facilities, sewage and solid waste disposal systems and facilities, and electric, gas, and other similar facilities and systems;

(B) Emergency facilities, including emergency, fire, police, and rescue facilities and equipment;

(C) Recreational facilities, including parks, athletic fields, buildings, or facilities and other similar facilities or related equipment;

(D) Public safety facilities, including prisons, jails, police stations, facilities, or equipment, and state patrol or other law enforcement facilities or equipment;

(E) Educational, cultural, or historical facilities and equipment;

(F) Administrative facilities or equipment, including city hall buildings and other governmental buildings; and

(G) Courthouses, public libraries, and other facilities to be leased or subleased, operated, or otherwise used by the authority or any other public body or any private person.

(7) "Public bodies" means and includes any county, political subdivision, or municipality of the state, and any state or local government agency, department, authority, agency, board, or instrumentality, each being a "public body."

(8) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law."

(10)"State" means the State of Georgia.

SECTION 3.

Creation of authority; purpose.

There is created a body corporate and politic to be known as the "Public Facilities Authority of the City of Fairburn," which shall be deemed to be a public corporation. Such corporation shall be separate and distinct from any public corporation or other entity heretofore created by the General Assembly and shall be an instrumentality of the state exercising governmental and proprietary powers. The authority is created for the purpose of promoting the public good and general welfare of the citizens of the city, of the county, and of the state and financing and providing facilities, equipment, and services within the county, whether or not within the city, for sale to, lease or sublease to, or operation by any public body or any private person. In connection with the exercise of any of its powers, the members of the authority may make findings or determinations that the exercise of its powers as proposed will promote the public good and general welfare, and assist public bodies in providing facilities, equipment, and services in the county, and such findings or determinations, if made, shall be conclusive and binding and shall not be subject to review.

SECTION 4.

Powers of the authority.

The authority shall have the power:

(1) To sue and be sued;

(2) To have and to use a seal and to alter the same at its pleasure;

(3) To acquire, construct, purchase, hold, own, lease as lessee, expand, improve, renovate, repair, maintain, and operate real and personal property or interests therein;

(4) To enter into contacts for operation, management, maintenance, and repair of any of its property;

(5) To sell, lease as lessor, or otherwise transfer, pledge, or dispose of any real and personal property or interests therein. In connection with any such lease, sale, transfer, assignment, or other disposition, the authority need not comply with any other provision of law requiring public bidding or any notice to the public of such lease, sale, transfer, assignment, or other disposition;

(6) To exercise the powers conferred upon a "public corporation" or a "public authority" by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority being expressly declared to be a "public corporation" or a "public authority" within the meaning of such provision of the Constitution of Georgia;

(7) To acquire projects and other property in its own name by gift or by purchase on such terms and conditions and in such manner as it may deem proper. If the authority shall deem it expedient to construct any project on real property or any interest therein or usufruct therein which is subject to the control of any other public body, then such other public body is hereby authorized to convey or lease such real property or interest therein to the authority for no consideration or for such consideration as may be agreed upon by the authority and such other public body, taking into consideration the public benefit to be derived from such conveyance, lease, or usufruct. Any public body may transfer such real property or interest therein without regard to any determination as to whether or not such property or interest therein is surplus;

(8) To accept gifts and bequests for its corporate purposes;

(9) To appoint, select, and employ, with or without bidding as the authority may choose, officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, underwriters or other advisors, and attorneys, and to fix their compensation;

(10) To make and execute with one or more public bodies and private persons contracts, lease agreements, rental agreements, installment sale agreements, and other instruments relating to the property of the authority and incident to the exercise of the powers of the authority, including contracts for constructing,

renting, leasing, and selling its projects for the benefit of other public bodies and, without limiting the generality of the foregoing, authority is specifically granted to the authority and to other public bodies to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements with each other relating to the provision of any project or services for a term not exceeding 50 years, as provided in Article IX, Section III, Paragraph I (a) of the Constitution of Georgia;

(11) To be a co-owner, along with other public bodies or, to the extent allowed by the Constitution of the state, private persons of any property, if the authority finds and determines that such co-ownership is in the best interests of the authority and will serve the public purposes of the authority;

(12) To purchase policies of insurance as may be deemed appropriate for its corporate purposes;

(13) To operate, lease, sell, transfer, or otherwise dispose of any property, real or personal, or assets of the authority, or to assign its rights under its contracts, lease agreements, or installment sale agreements or its right to receive payments thereunder, either directly or through trust or custodial arrangements whereby interests are created in such contracts, lease agreements, or installment sale agreements or the payments to be received thereunder through the issuance of trust certificates, certificates of participation, custodial receipts, or other similar instruments. In connection with any such lease, sale, transfer, assignment, or other disposition, the authority need not comply with any other provision of law requiring public bidding or any notice to the public of such lease, sale, transfer, assignment, or other disposition;

(14) To accept loans and grants of money or property of any kind from the United States, or any public body or private person and all public bodies are authorized to make grants to the authority, subject to any limitations in the Constitution of Georgia;

(15) To borrow money for any of its corporate purposes and to issue revenue bonds and other obligations payable from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rents,

charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such obligations;

(16) To enter into:

(A) Interest rate swaps, collars, or other types of interest rate management agreements; or

(B) Credit enhancement or liquidity agreements relating to any obligations of the authority, provided that the obligation of the authority under such agreements shall not be a general obligation of the authority but shall be a limited obligation of the authority payable from a specific source of funds identified for such purpose;

(17) To make such rules and regulations governing its employees and property as it may in its discretion deem proper;

(18) To be sued the same as any private corporation on any contractual obligation of the authority. The authority shall have the same rights to sue any other person or entity as any private corporation;

(19) To issue its revenue bonds or other obligations to finance or refinance any project which may be financed by the city or by the county; and

(20) To have and exercise usual powers of private corporations except such as are inconsistent with this Act, and to do any and all things necessary and convenient to accomplish the purpose and powers of the authority as herein stated.

SECTION 5.

Members of the authority; terms of office.

Each person who is serving on the board of directors of the Development Authority of the City of Fairburn shall be by virtue of such office also a member of the authority and shall serve on the governing board of the authority so long as such person serves on the board of directors of the Development Authority of the City of Fairburn. The members of the authority shall hold office for terms coinciding with their terms on the board of directors of the Development Authority of the City of Fairburn. In the event that the number of members of the board of directors of the Development Authority of the City of Fairburn is changed, then the number of members of the authority shall be correspondingly changed. Immediately after their official seating on the board of directors of the Development Authority of the City of Fairburn, each member of the authority shall enter upon their duties. A majority of the members of the authority holding office at any time shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority and, in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds and other obligations. The authority shall elect one of its members as chairperson, and from its membership shall elect a secretary and a treasurer. The authority may elect one of its members as a vice-chairperson and may elect any number of assistant secretaries or treasurers, who need not be members of the authority, as it may from time to time deem necessary or desirable. The members of the authority shall not be entitled to compensation for their services, but may be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority may make rules and regulations for its own governance, and it shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this Act or impair the obligations of any contracts existing under this Act.

SECTION 6.

Issuance and sale of revenue bonds and other obligations.

The authority shall have power and is authorized from time to time to provide for the issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," and may issue other obligations for the purpose of paying all or any part of the cost of any one or more projects, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving any such project, or for the purpose of refunding, as herein provided, any such bonds or other obligations of the authority or to refund bonds or other obligations of any other authority or public body previously issued to finance or refinance the cost of a project. The principal of and interest on such revenue bonds or other obligations shall be a limited obligation of the authority payable solely from the source or sources of funds specified in the indenture or resolution of the authority authorizing the issuance of such revenue bonds or other obligations. Such revenue bonds or other obligations shall mature on such dates, bear interest at such rate or rates, whether fixed or variable, be subject to redemption and have such other terms as the authority may provide in the indenture or resolution relating thereto. Such revenue bonds or other obligations shall not be subject to any provision of state law limiting the rate of interest payable thereon, and may be sold in a negotiated sale or in a public sale as the authority may determine. Such revenue bonds or other obligations may be issued for cash, property or other consideration and may be sold in a negotiated sale or in a public sale at such price on such terms as the authority may determine. The offer, sale or issuance of the authority's revenue bonds or other obligations (including any separate securities securing the same) shall not be subject to regulation under Chapter 5 of Title 10 of the O.C.G.A., the "Georgia Securities Law," or any other law, including, without limitation, the Georgia Uniform Securities Act of 2008 contained in Chapter 5 of Title 10 of the O.C.G.A., as the same may be amended from time to time.

SECTION 7.

Revenue bonds or other obligations not a debt or general obligation.

Revenue bonds or other obligations issued under the provisions of this Act or any loan incurred as authorized herein shall not constitute a debt or a pledge of the faith and credit of any other public body, but shall be payable solely from the sources as may be designated in the resolution or indenture of the authority authorizing the issuance of the same. The issuance of such obligations shall not directly, indirectly, or contingently obligate any public body to levy or to pledge any form of taxation whatsoever for the payment thereof, unless otherwise provided by an intergovernmental contract executed by such public body. No holder of any bond or other obligation or receiver or trustee in connection therewith shall have the right to enforce the payment thereof against any property of any other public body nor shall any such bond or other obligation constitute a charge, lien, or encumbrance, legal or equitable, upon any such property unless otherwise provided by an intergovernmental contract executed by such other public body and the authority. All such obligations shall contain on their face a recital setting forth substantially the foregoing provisions of this section. Nothing in this section shall be construed to prohibit any other public body from obligating itself to pay the amounts required under any intergovernmental contract entered into with the authority pursuant to Article IX of the Constitution of Georgia or any successor provision, including (if such other public body has taxing power) from funds received from taxes to be levied and collected by such other public body for that purpose and from any other source.

SECTION 8.

Issuance of bonds or obligations under indentures or resolutions.

In the discretion of the authority, any issuance of such revenue bonds or other obligations may be secured by a trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority including the proceeds derived from the financing, sale, or lease, or operation from time to time, of any project. Either the resolution providing for the issuance of revenue bonds or other obligations or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the owners of such bonds or obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority or any lessee or purchaser in relation to the acquisition and construction of any project, the maintenance, operation, repair, and financing of any project, and the custody, safeguarding, and application of all moneys, including the proceeds derived from the sale or lease of any project or from the sale of any such revenue bonds or other obligations and may contain provisions concerning the conditions, if any, upon which additional bonds or other obligations may be issued, whether on a parity with or subordinate to any other obligations issued by the authority. Such indenture or resolution may set forth the rights and remedies of the owners of such obligations and of the trustee. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the owners of such bonds or other obligations or otherwise necessary or convenient in connection with the issuance of such obligations. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 9.

Security for the payment of bonds or other obligations.

The authority may assign or pledge any property, or revenues and its interest in any contracts, lease agreements, or installment sales agreements, or the amounts payable thereunder, to the payment of the principal and interest on revenue bonds and other obligations of the authority as the resolution authorizing the issuance of the bonds or other obligations or the trust indenture may provide. The use and disposition of such property or revenues assigned to the payment of bonds or other obligations shall be subject to the indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any lien created by the authority for the payment of such bonds or obligations may be a first lien or a subordinate lien as the authority may provide, and any such indenture or resolution may provide, at the option of the authority, for the issuance of additional bonds or other obligations sharing any lien on a parity or subordinate lien basis.

SECTION 10.

Refunding bonds or obligations.

The authority is authorized to provide by resolution for the issuance of obligations, whether revenue bonds or other obligations, for the purpose of refunding any revenue bonds or other obligations issued under the provisions of this Act or under any other provision of state law so long as such bonds or other obligations were issued for a purpose or project for which the authority could issue bonds or other obligations. The issuance of such refunding bonds or other obligations and all the details thereof, the rights of holders thereof, and the duties of the authority with respect to the same shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

SECTION 11.

Principal office; venue.

The principal office of the authority shall be in the City of Fairburn, and the venue of any action against it shall be in Fulton County. Service upon the authority of any process, subpoena, or summons shall be effected by serving the same personally upon any member of the authority.

SECTION 12.

Validation of revenue bonds; elective validation of other obligations.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," as the same now exists or may hereafter be amended. At the election of the authority, other obligations of the authority may be validated as if they were revenue bonds. The petition for validation shall name the authority as a defendant and may also make a party defendant to such action any other private person or public body that has or will contract with the authority with respect to the project for which revenue bonds or other obligations are to be issued and are sought to be validated. The bonds or other obligations, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds or other obligations and the security therefor against the authority, other parties to the validation and against all other private persons and public bodies, regardless of whether such private persons or public bodies were parties to such validation proceedings. Any action pertaining to the validation of any revenue bonds or other obligations issued under the provisions of this Act and for the validation of any instruments entered or to be entered into by the authority or other private persons or public bodies securing the same shall be brought in the Superior Court of Fulton County, and such court shall have exclusive original jurisdiction of such actions.

SECTION 13.

No impairment of rights.

While any of the bonds or other obligations issued by the authority or any interests in contracts of the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such bonds or obligations or such interests in contracts of the authority. The provisions of this section of this Act shall be for the benefit of the authority and of the holders of any such bonds or obligations and interests in contracts of the authority and, upon the issuance of bonds or obligations or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or obligations or such interests in contracts of the authority.

SECTION 14.

Trust funds; permitted investments.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or obligations of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act. Any such moneys or funds may be invested from time to time in such investments as may be permitted under the indenture, agreement, or resolution establishing the fund or account in which such funds are held, or if not held in such a fund or account, in such investments as would be permitted for investments of a development authority created under Code Section 36-62-1, et seq. of the O.C.G.A.

SECTION 15.

Power to set rates, fees, and charges.

The authority is authorized to operate, sell, or lease any project and to prescribe and fix rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, and subleases of its projects, and to determine the price and terms at and under which its projects may be sold, leased, or otherwise disposed of. The authority may establish in its discretion procedures for contracting for any work done for the authority or for the acquisition, sale, transfer, lease, management, or operation of any property, real or personal, of the authority. The authority may contract with others, including private persons, for services relating to the management, operation, sale, or leasing of any project.

SECTION 16.

Revenue bonds or other obligations exempt from taxation.

All revenue bonds or other obligation issued as provided in this Act are declared to be issued or incurred for an essential public and government purpose and such obligations and the interest thereon shall be exempt from all taxation within this state.

SECTION 17.

Essential governmental function; no taxes or assessments.

All property or interests in property owned by the authority shall be public property held and owned for governmental purposes and such property and all interests therein shall be exempt from ad valorem taxation. The exercise of the powers conferred upon the authority hereunder shall constitute an essential governmental function for a public purpose and the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it, or of buildings acquired or erected by it, or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority. The tax exemption herein provided shall include an exemption from any tax on rents from the leasing or subleasing of any project or other property of the authority, but shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

Immunity of authority and members.

The authority shall have the same immunity and exemption from liability for torts and negligence as the county and the officers, agents, and employees of the authority, when in the performance of the work of the authority, shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of the county.

SECTION 19.

Authority property not subject to levy and sale.

The property of the authority shall not be subject to levy and sale under legal process, except this provision shall not preclude a sale or foreclosure of any property under the terms of any deed to secure debt, mortgage, assignment, or security agreement that the authority has executed.

SECTION 20.

Authority area of operation.

The scope of the authority's operations shall be limited to the territory embraced within the territorial limits of the county and any municipalities therein, as the same now or may hereafter exist; provided, however, that nothing in this section shall prevent the authority from contracting with any entity or body, public or private, outside of the county with respect to any project located in the county or located outside of the county in furtherance of its public purposes.

SECTION 21.

Supplemental powers.

This Act does not in any way take away from the authority any power which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

No power to impose taxes or exercise power of eminent domain.

The authority shall not have the right to impose any tax on any person or property and shall not have the right to exercise the power of eminent domain.

SECTION 23.

Conveyance of property upon dissolution.

Should the authority for any reason be dissolved after full payment of all revenue bonds and other obligations of the authority and the termination of any leases, contracts, or options to which the authority is a party, the interest and any redemption premiums thereon, title to the items of property, and funds of the authority held at the time of dissolution shall, prior to such dissolution, be conveyed and transferred to such one or more public bodies, as the authority shall elect.

SECTION 24.

Act to be liberally construed.

This Act shall be liberally construed to effect the purposes hereof.

SECTION 25.

Severability of provisions.

Should any sentence, clause, phrase, or part of this Act be declared for any reason to be unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall remain in full force and effect, and it is the express intention of this Act to enact each provision of this Act independently of any other provision hereof.

SECTION 26.

Effective date.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 27.

Conflicting laws.

All laws and parts of laws in conflict with this Act are repealed.