
INTERGOVERNMENTAL CONTRACT

by and between

DOWNTOWN SAVANNAH AUTHORITY

and

MAYOR AND ALDERMEN
OF THE CITY OF SAVANNAH

dated as of _____, 2019

relating to the

DOWNTOWN SAVANNAH AUTHORITY (GEORGIA)
TAXABLE REVENUE BONDS
(CITY OF SAVANNAH RIVER STREET PARKING PROJECT),
SERIES 2019

in the aggregate principal amount of \$_____

TABLE OF CONTENTS

PREAMBLE1

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions.....5
Section 1.02. Rules of Construction.....5

ARTICLE II
REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Section 2.01. Representations, Warranties, and Agreements of the Authority6
Section 2.02. Representations, Warranties, and Agreements of the City.....6

ARTICLE III
ISSUANCE OF BONDS

Section 3.01. The Bonds.....8
Section 3.02. Date, Denomination, and Maturities8
Section 3.03. Obligations Relating to the Resolution and the Bonds.....8
Section 3.04. Application of Bond Proceeds.....8

ARTICLE IV
FINANCING OF THE PROJECT; CONSTRUCTION

Section 4.01. The Project; Financing of Project.....9
Section 4.02. Undertaking of Project9
Section 4.03. Disbursements from the Construction Fund.....9
Section 4.04. Establishment of Completion Date.....9
Section 4.05. Investment of Moneys9

ARTICLE V
CONTRACT PAYMENTS BY THE CITY

Section 5.01. Contract Payments by the City.....10
Section 5.02. Credits.....10
Section 5.03. Place of Payments.....10
Section 5.04. City’s Obligations Unconditional.....10
Section 5.05. City’s Remedies.....11
Section 5.06. Tax Levy to Make Payments11
Section 5.07. Prior Lien of Bonds11

ARTICLE VI
[RESERVED]

ARTICLE VII
INDEMNITY

Section 7.01. Indemnification; Immunity of Members of Authority13

ARTICLE VIII
DEFAULTS; REMEDIES

Section 8.01. Events of Default Defined14
Section 8.02. Remedies on Default14
Section 8.03. Attorneys’ Fees and Expenses15
Section 8.04. No Waiver of Breach15
Section 8.05. City Authorized to Cure Default of Authority15
Section 8.06. Failure to Enforce Agreement Not a Waiver15

ARTICLE IX
PREPAYMENT

Section 9.01. Optional Prepayment16
Section 9.02. Exercise of Optional Prepayment16

ARTICLE X
TERM; MISCELLANEOUS

Section 10.01. Term of this Contract17
Section 10.02. Notices17
Section 10.03. Binding Effect17
Section 10.04. Severability17
Section 10.05. Amounts Remaining in Funds18
Section 10.06. Payments Made by Garage Manager Held by City18
Section 10.07. Delegation of Duties by Authority18
Section 10.08. Continuing Disclosure18
Section 10.09. Amendments, Changes, and Modifications18
Section 10.10. Execution Counterparts18
Section 10.11. Captions18
Section 10.12. Law Governing Construction of Contract18

INTERGOVERNMENTAL CONTRACT

THIS INTERGOVERNMENTAL CONTRACT (this “**Contract**”), dated as of _____, 2019, made and entered into by and between the DOWNTOWN SAVANNAH AUTHORITY, an instrumentality of the State of Georgia and a public corporation thereof (the “**Authority**”), and the MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, a municipal corporation and a political subdivision of the State of Georgia (the “**City**”);

PREAMBLE

1. The Authority has been created pursuant to an amendment to the Constitution of the State of Georgia (Ga. Laws 1974, p. 1738) and the Authority's powers have been further defined pursuant to an act of the General Assembly of Georgia (Ga. Laws 1981, p. 4041) (collectively, the “**Act**”).

2. Pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, any municipality or other political subdivision of the State of Georgia may contract for any period not exceeding 50 years with any public authority for joint services, for the provision of services or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities which the contracting parties are authorized by law to undertake or provide.

3. Under the Act, the Authority is empowered to undertake “projects” which include the acquisition, construction, equipping, maintenance, and operation of any public project or other public facility, parking lots or garages and other parking structures, and any and all other facilities useful or desirable in connection with such undertakings, all for the essential public purposes of development and promotion of public welfare, trade, commerce, etc., in the City.

4. Under the Act, the Authority is further empowered to make contracts for the construction of projects or with respect to the use of projects which it causes to be erected or acquired and to contract with the City upon such terms and for such purposes as may be deemed advisable for a term not exceeding 50 years.

5. Under the Act, the Authority is authorized to provide for the issuance of its revenue bonds for the purpose of paying all or any part of the cost of one or more projects.

6. The City is authorized to levy taxes, without limitation as to rate or amount, and to expend tax monies of the City and other available funds and to obligate the City, in consideration of the provision by the Authority of parking garage facilities in the downtown area of the City, to make payment to the Authority of the amounts, and upon such terms as are provided for in this Contract.

7. The Act provides that revenue bonds issued by the Authority shall not be deemed to constitute a debt of the State of Georgia or any municipality or political subdivision thereof which may contract with the Authority, and that no contract entered into by the Authority with any such municipality or political subdivision shall create a debt of such municipality or political subdivision within the meaning of Article IX, Section V, Paragraph I of the Constitution of the

State of Georgia, but any such municipality or political subdivision may obligate itself to make the payments required under such contract from moneys received from taxes and from any other source without creating a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of the State of Georgia.

8. In furtherance of the purposes of the Act, on behalf of and at the request of the City, and pursuant to a bond resolution adopted by the Authority on June 17, 2016, as amended and supplemented by a supplemental bond resolution adopted on November 17, 2016 (together, the “**2016 Resolution**”), the Authority issued its TAXABLE REVENUE BONDS (CITY OF SAVANNAH RIVER STREET PARKING PROJECT), SERIES 2016 (the “**Series 2016 Bonds**”) in the aggregate principal amount of \$33,060,000 to provide funds and services for the purposes of (i) financing the acquisition, development, construction, and equipping of a 488-space parking garage (the “**Parking Garage**”) in the downtown area of the City (the “**Project**”), (ii) paying two years of capitalized interest on the Bonds, and (iii) paying the expenses incurred in connection with the issuance of the Bonds.

9. A portion of the proceeds from the sale of the Series 2016 Bonds was deposited in the hereinafter defined Construction Fund and requisitioned therefrom for payment to Plant Riverside, LLC “**Riverside**”), a Delaware limited liability company, for the purposes of constructing the Parking Garage pursuant to a guaranteed maximum price contract between Riverside and Hunt Construction Company.

10. Pursuant to a Construction and Payment Guaranty Agreement (the “**Kessler Guaranty**”) executed in favor of the Authority by Richard C. Kessler (“**Kessler**”), a principal in Riverside, Kessler (i) guaranteed the completion of the Project and payment of all costs and expenses thereof and (ii) guaranteed that Riverside will pay all debt service payments on the Series 2016 Bonds during the four years of such debt service following a two-year capitalized interest period; in addition, the completion of the Parking Garage for the guaranteed maximum price will be secured by performance bonds in favor of the Authority from all major subcontractors.

11. Riverside owns the land (the “**West Land**”), which includes land on which the Parking Garage will be located, and has leased the West Land to Kessler Condo Declarant, LLC (“**Declarant**”), a Delaware limited liability company, pursuant to a 50-year ground lease (the “**Ground Lease**”).

12. Declarant has provided the Authority with a leasehold deed to secure debt (the “**Leasehold Security Deed**”) on its leasehold interest in the West Land as security for the completion of the Parking Garage and its conveyance to the Authority.

13. Upon completion of the construction of the building (the “**West Building**”) in which the Parking Garage will be located, Declarant will record a declaration of condominium (the “**Declaration**”), consisting of a Parking Garage Condominium Unit (the “**Parking Garage Condominium**”) and a West Hotel Condominium Unit (the “**West Hotel Building**”), at which time Declarant will convey the Parking Garage Condominium to the Authority and the Leasehold Security Deed will be cancelled; the Authority’s ownership of the Parking Garage Condominium will run contemporaneously with the 50-year term of the Ground Lease and, upon

expiration, title to the improvements constituting the Parking Garage Condominium will revert to Riverside.

14. During the term of the Authority's ownership of the Parking Garage Condominium, the Authority and Kessler Parking Garage Manager, LLC (the "**Garage Manager**") will enter into a Parking Garage Management Agreement (the "**Garage Management Agreement**") with the Authority, pursuant to which the Garage Manager will manage all 488 spaces, collect all revenues from the operation of the Parking Garage, and pay all operating expenses, including maintenance and repair for the Parking Garage. In addition, the Garage Manager shall be responsible for the payment of the following amounts in connection with its management and operation of the Parking Garage:

(i) all amounts necessary to cover the monthly installments of the debt service payments of the Series 2016 Bonds (the "**Series 2016 Bond Repayment Amount**");

(ii) an annual amount no less than one percent of the annual parking revenue of the Parking Garage (the "**Capital Reserve Fee**") placed in a capital maintenance reserve fund (the "**Capital Reserve Fund**") to be held in escrow pursuant to a Cash Management Agreement (the "**Cash Management Agreement**") for necessary or appropriate capital improvements to the Parking Garage;

(iii) an annual fee of \$100,000 during the first 30 years of the term of the Parking Garage Management Agreement and \$50,556 per annum for the remaining 18 years of the Ground Lease and ownership by the Authority of the Parking Garage Condominium as a "risk premium" fee (the "**Risk Premium Fee**"); and

(iv) an amount equal to the real property taxes assessed against the Parking Garage or, in the absence of such assessment, an amount equal to the real property taxes which would be due and payable to be calculated based upon 40% of the fair market value of the Parking Garage at the then applicable ad valorem rate (the "**Ad Valorem Tax Payment**," and collectively with the Series 2016 Bond Repayment Amount, the Capital Reserve Fee, and the Risk Premium Fee, the "**Parking Garage Manager Obligations**").

15. Pursuant to a Security Agreement (the "**Security Agreement**") between the Garage Manager and the Authority, the Garage Manager has secured its indebtedness and obligations under the Garage Management Agreement; and

16. In addition to the foregoing, in order to ensure the necessary funding for completion, the Authority, along with additional lenders for the West Hotel Building, entered into a Recognition Agreement whereby the parties set forth the parameters and guidelines for continued funding for the completion of the West Building in the event of Kessler's default (the "**Recognition Agreement**"). As further security for the Authority's future interest in the Parking Garage Condominium, the Recognition Agreement has been drafted to ensure the Authority maintains a first priority lien and security interest over the leasehold interest of the Declarant in

the West Land pursuant to the Leasehold Security Deed prior to completion of construction of the West Building.

17. Pursuant to an Intergovernmental Contract (the “**2016 Contract**”) between the Authority and the City, dated the date of issuance and delivery of the Series 2016 Bonds, the City agreed to make payments, if required, to the Authority sufficient to pay the principal of, premium, if any, and interest on the Series 2016 Bonds as the same become due.

18. Riverside informed the City that, due to cost overruns on the construction of the Parking Garage, additional financing is needed to complete the Parking Garage, and has requested that this financing be provided through the issuance by the Authority of its DOWNTOWN SAVANNAH AUTHORITY (GEORGIA) TAXABLE REVENUE BONDS (CITY OF SAVANNAH RIVER STREET PARKING PROJECT), SERIES 2019 (the “**Bonds**”), in an aggregate principal amount not to exceed \$10,500,000. Both the Authority and the City have determined that the projected revenue of the Parking Garage will support the debt service on the Series 2016 Bonds and the Bonds as well as the existing obligations of the Garage Manager under the Garage Management Agreement; and

19. The Mayor and Alderman of the City adopted a resolution on June 20, 2019 approving the financing of the completion of the Parking Garage with the proceeds of the Bonds, authorizing the City Manager to request that the Authority issue the Bonds and authorizing the City to enter into this Intergovernmental Contract with the Authority (this “**Contract**”) to be dated the date of issuance and delivery of the Bonds; and

20. Pursuant to amendments to the Kessler Guaranty, the Garage Management Agreement, the Security Agreement and a consent agreement regarding the Recognition Agreement, which have been entered into among various parties, the payment of the Bonds and the other obligations of Kessler, the Declarant and the Garage Manager are secured in the same manner as payment of the Series 2016 Bonds and other obligations of Kessler are secured;

21. In furtherance of the purposes of the Act and on behalf of and at the request of the City, the Authority adopted a bond resolution on August 8, 2019, as supplemented by a supplemental bond resolution adopted on _____, 2019 (together, the “**Resolution**”), providing for the issuance of the Bonds in the aggregate principal amount of \$_____ to provide funds for the purposes of paying the cost of completing the construction of the Project and paying expenses incurred in connection with the issuance of the Bonds; and

22. The Authority and the City propose to enter into this Contract, pursuant to which the Authority will agree to issue the Bonds to provide funds for the above-described purposes, and the City, in consideration of the Authority’s doing so, will agree to pay to the Authority, if needed, from its general fund or from the proceeds of a tax levied on all taxable property located within the boundaries of the City, at such rate or rates as may be necessary to make contract payments to the Authority as called for pursuant to this Contract in amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, and agreements hereinafter set forth, the Authority and the City hereby agree as follows; provided, that in the performance of the covenants and agreements of the Authority herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt of the Authority but shall be payable solely out of the proceeds derived from the sale of the Bonds and the Revenues described in this Contract:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions. All words and phrases defined in the Preambles to the Resolution and this Contract and in Section 101 of the Resolution shall have the same meanings in this Contract.

Section 1.02. Rules of Construction. The definitions referred to in Section 1.01 shall be equally applicable to both the singular and the plural forms of the terms therein defined and shall cover all genders.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter,” “this Contract,” and other equivalent words refer to this Contract and not solely to the particular portion thereof in which any such word is used.

All references herein to particular Articles or Sections are references to Articles or Sections of this Contract unless otherwise specified.

[END OF ARTICLE I]

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01. Representations, Warranties, and Agreements of the Authority. The Authority represents, warrants, and agrees that:

(a) The Authority is a public body corporate and politic created and existing under the Act and, unless otherwise required by law, shall maintain its corporate existence so long as any Bonds are Outstanding. Under the provisions of the Act, the Authority is authorized to enter into and carry out the transactions contemplated by this Contract and the Resolution;

(b) The Authority and the City heretofore have agreed that the Authority will provide financing and services for the undertakings described in the preamble to this Contract by the issuance of the Bonds as set forth in the Resolution;

(c) There is no litigation or proceeding pending, or to the knowledge of the Authority threatened, against the Authority or against any other party which would have a material adverse effect on the right of the Authority to execute this Contract or the ability of the Authority to comply with any of its obligations under the Bonds, this Contract, the Resolution, or any other documents contemplated to be executed by the Authority in connection with the issuance and delivery of the Bonds;

(d) This Contract, upon execution of the same, will constitute the legal, valid, and binding obligation of the Authority in accordance with its terms, and performance by the Authority of its obligations hereunder will not violate, or result in a breach of any of the provisions of, or constitute a default under, any agreement or instrument to which the Authority is a party or by which the Authority is bound;

(e) The Authority has not made, done, executed, or suffered, and warrants that it will not make, do, execute, or suffer any act or thing whereby any title to or interest the Authority may have in the Project will or may be impaired or encumbered in any manner except as permitted herein and the Resolution; and

(f) Except as herein and in the Resolution provided, the Authority will not encumber any part of its interest in the Project or in the Revenues described herein or its rights under this Contract. The pledge made in the Resolution of the Revenues payable under this Contract constitutes a first and prior pledge of and lien on said Revenues and said pledge shall at no time be impaired by the Authority and the Revenues shall not otherwise be pledged.

Section 2.02. Representations, Warranties, and Agreements of the City. The City represents, warrants and agrees as follows:

(a) The City is a municipal corporation and a political subdivision of the State, having power to enter into and execute, deliver and perform this Contract, and, by proper action of its governing body, has authorized the execution and delivery of this Contract and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Contract and the Resolution, and no approval

or other action by any governmental authority, agency or other person is required in connection with the delivery and performance of this Contract by it except as shall have been obtained as of the date of delivery of the Bonds;

(b) There is no litigation or proceeding pending, or to the knowledge of the City threatened, against or affecting the City, nor to the best of the knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Contract or which, in any way, would adversely affect the validity or enforceability of the Bonds, this Contract, the Resolution or any other documents contemplated to be executed in connection with the issuance and delivery of the Bonds;

(c) This Contract, upon execution of the same, will constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms, and performance by the City of its obligations hereunder will not violate, or result in a breach of any of the provisions of, or constitute a default under, any agreement or instrument to which the City is a party or by which the City is bound; and

[END OF ARTICLE II]

ARTICLE III

ISSUANCE OF BONDS

Section 3.01. The Bonds. In order to provide funds for the purposes set forth in the preamble to this Contract, the Authority will, in accordance with the Act, issue the Bonds, and all of the covenants, agreements, and provisions hereof shall, to the extent provided herein and in the Resolution, be for the equal and proportionate benefit and security of the owners of the Bonds without preference, priority or distinction as to the charge, lien or otherwise of any one Bond over any other Bond, so that every owner of the Bonds shall have the same rights, privileges and lien by virtue hereof.

Section 3.02. Date, Denomination, and Maturities. The Bonds will be issued in registered form and will mature and be paid pursuant to the provisions of Article II of the Resolution. Interest on the Bonds will be paid to the person or persons and in the manner stated in the Bonds and in the Resolution, until the obligation of the Authority with respect to the payment of the principal of the Bonds shall be discharged in accordance therewith.

Section 3.03. Obligations Relating to the Resolution and the Bonds. The City agrees to perform all undertakings and obligations which are contemplated or required to be performed by the City pursuant to the provisions of the Resolution.

Section 3.04. Application of Bond Proceeds. At and upon the delivery of and payment for the Bonds, the proceeds received therefrom shall be applied in accordance with the provisions of Section 511 of the Resolution.

[END OF ARTICLE III]

ARTICLE IV

FINANCING OF THE PROJECT; CONSTRUCTION

Section 4.01. The Project; Financing of Project. Subject to the provisions of the Recognition Agreement, the Authority agrees to cause the Project to be acquired, developed, constructed, and equipped, with a portion of the proceeds of the Bonds. The City agrees to make the payments provided for in Section 5.01 in accordance with the provisions of this Contract.

Section 4.02. Undertaking of Project. The Authority agrees that the Project will be undertaken in accordance with the Plans and Specifications.

Section 4.03. Disbursements from the Construction Fund. Disbursement of the proceeds of the Bonds for the construction of the Project shall be made in accordance with the terms of the Disbursement Agreement.

Section 4.04. Establishment of Completion Date. The Completion Date shall be established as set forth in Section 509 of the Resolution.

Section 4.05. Investment of Moneys. Any moneys held as a part of the Construction Fund or Debt Service Fund shall be invested or reinvested as directed by the City Representative in accordance with Article VI of the Resolution.

[END OF ARTICLE IV]

ARTICLE V

CONTRACT PAYMENTS BY THE CITY

Section 5.01. Contract Payments by the City. Pursuant to this Contract, unless otherwise paid pursuant to the terms of the Garage Management Agreement or the Kessler Guaranty, the City agrees to make payments directly to the Paying Agent, as described in Section 5.03, sufficient to pay the following:

(a) the principal of, premium, if any, and interest due on the Bonds, upon maturity, redemption or otherwise. All such payments shall be made to the Paying Agent at its Principal Office in lawful money of the United States of America in immediately available funds on or before the date on which due; and

(b) the reasonable fees of the Paying Agent and Bond Registrar as provided in the Resolution. Said fees and expenses shall be paid when due directly to the Paying Agent and Bond Registrar for its own account.

Each payment to be made by the City hereunder is to be made on a parity with every other payment hereunder.

Section 5.02. Credits. Any amounts in the Debt Service Fund prior to any Interest Payment Date or date fixed for redemption of Bonds, shall be credited against the payments due by the City under this Contract, and any amount in the Debt Service Fund on any Interest Payment Date or redemption date in excess of the amount required to pay the principal of, redemption premium, if any, and interest on Bonds on such date, at the written direction of the City Representative, shall be applied by the Paying Agent to the purchase of Bonds in the open market as provided for in Section 505(a) of the Resolution.

Section 5.03. Place of Payments. The payments to be made pursuant to Section 5.01(a) shall be paid directly to the Paying Agent for the account of the Authority and shall be deposited in the Debt Service Fund as required by the Resolution. The payments to be made pursuant to subsections (b) and (c) of Section 5.01 shall be paid directly to the party to whom such payment is to be made for its own use.

Section 5.04. City's Obligations Unconditional. The obligations of the City to make payments required in this Article V on the dates and in the manner herein specified and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, regardless of any contingencies whatever and notwithstanding any circumstances or occurrences that may arise or take place hereafter, and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise. Until such time as the principal of and interest on the Bonds shall have been paid or provision for such payment shall have been made in accordance with the Resolution, the City (i) will not suspend or discontinue any payments for which provision is made in Section 5.01, (ii) will perform and observe all of its other covenants and agreements contained in this Contract, and (iii) will not terminate this Contract for any cause including, without limiting the generality of the foregoing, impossibility or illegality of performance on the part of the Authority of any of its obligations hereunder or under the Resolution, any acts or circumstances that may constitute failure of consideration, *force majeure*, destruction of or damage to the Project or any part thereof, frustration of purpose, the

unavailability for use by the City on the date hereof or on any date hereafter of the Project, any change in the tax or other laws of the United States of America or the State of Georgia or any political subdivision thereof, or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Contract or out of the Resolution.

Section 5.05. City's Remedies. If the Authority shall fail to perform any of its agreements in this Contract, the City may institute such action against the Authority as the City may deem necessary to compel such performance so long as such action shall not affect, impair or diminish the obligation of the City to make the payments provided for herein, which obligation shall be absolute, unconditional and irrevocable. The City may at its own cost and expense, and in its own name, prosecute or defend any action or proceedings against third parties or take any other action which the City deems reasonably necessary to secure or protect its rights hereunder, in which event the Authority agrees to cooperate fully with the City.

Section 5.06. Tax Levy to Make Payments. The City will exercise its power of taxation to the extent necessary to pay the amounts required to be paid hereunder and will make available and use for the payment of its obligations incurred hereunder all such taxes levied and collected for that purpose together with funds received from any other source. The City, in order to make such funds available for such purpose in each fiscal year, will in its general revenue, appropriation and budgetary measures whereby its tax funds or revenues and the allocation thereof are controlled or provided for in each fiscal year during the term of this Contract, include sums sufficient to satisfy the payments required to be made under this Contract, whether or not any other sums are included in such measure, until all payments required to be made hereby shall have been made in full. The obligation of the City to make the payments provided for pursuant to the terms of this Contract shall constitute a general obligation of the City and a pledge of the full faith and credit of the City to provide the funds required to fulfill such obligation.

Section 5.07. Prior Lien of Bonds. The Authority will not hereafter issue any other bonds or obligations of any kind or nature payable from or enjoying a lien on the revenue derived from this Contract superior to the lien created in the Resolution for the payment of the Bonds.

[END OF ARTICLE V]

ARTICLE VI
[RESERVED]

ARTICLE VII

INDEMNITY

Section 7.01. Indemnification; Immunity of Members of Authority.

(a) During the term of this Contract, the City, at its own expense, shall handle to conclusion all claims and pay all judgments obtained against the City or the Authority by reason of (i) any injury to or death of any person or damage to property occurring on or about any facilities constituting the Project or any part thereof occasioned by or growing out of or arising or resulting from any tortious or negligent act on the part of the City, its agents or employees in connection with the Project; (ii) any use, non-use, condition of, or defect in any facilities constituting a part of the Project; and (iii) any failure, breach, or default on the part of the City in the performance of or compliance with any of the obligations of the City under the terms of this Contract; provided, however, that the indemnity provided by this Section 7.01 shall be effective only to the extent that the amount of liability arising from any such loss shall exceed the proceeds available therefor obtained from insurance carried with respect to such loss.

(b) Notwithstanding the fact that it is the intention of the parties that the Authority shall not incur any pecuniary liability by reason of the terms of this Contract or the undertakings required of the Authority hereunder by reason of the issuance of the Bonds, the adoption of the Resolution, or the performance of any act requested of the Authority by the City; nevertheless, if the Authority should incur any such pecuniary liability, then in that event, the City shall indemnify and hold the Authority harmless against all claims, demands, or causes of action arising therefrom and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and, upon notice from the Authority, the City shall defend the Authority in any such action or proceeding.

(c) No recourse shall be had for the enforcement of any obligation, covenant, or agreement of the Authority contained in this Contract or in the Bonds or the Resolution for any claim based hereon or thereon against any member, officer, or employee of the Authority or of any successor thereto, in his individual capacity, either directly or through the Authority whether by virtue of any constitutional provision, statute, or rule of law. This Contract, the Bonds, and the Resolution are solely corporate obligations, and no personal liability shall attach to or be incurred by, any member, officer, or employee of the Authority or of any successor thereto, either directly or by reason of the obligations, covenants or agreements entered into between the Authority and the City, and all personal liability of any character against every such member, officer, and employee is, by the execution of this Contract, expressly waived and released. The immunity of members, officers, and employees of the Authority under the provisions contained in this Section 7.01 shall survive the completion of the acquisition and construction of the facilities constituting the Project and the termination of this Contract.

[END OF ARTICLE VII]

ARTICLE VIII

DEFAULT; REMEDIES

Section 8.01. Events of Default Defined. The following shall be “events of default” under this Contract and the term “event of default” shall mean, whenever used in this Contract, any one of the following events:

(a) failure by the City to pay when due any amount required to be paid under Section 5.01(a);

(b) The City shall fail to perform any of the other agreements, conditions, covenants, or terms herein required to be performed by the City and such default shall continue for a period of thirty days after written notice has been given to the City by the Authority, the Paying Agent, or the Bondholders specifying such default and requesting that it be remedied, or within a greater number of days if such remedy has been undertaken and is being diligently pursued and more than thirty days is required for its completion; provided, however, that if, by reason of force majeure, the City is unable, in whole or in part, to perform the obligations on its part herein undertaken (other than the obligations relating to the payments to be made under Section 5.01(a)), the City shall not be deemed in default during the continuance of such inability to perform. The term *force majeure* shall mean, without limitation, acts of God; strikes; work stoppages or similar disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes, fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery or equipment; partial or entire failure of utilities, or any other cause or event not reasonably within the control of the City. The City will, however, use its best efforts to remedy, with all reasonable dispatch, the cause or causes preventing the City from carrying out such obligation; provided, that the settlement of strikes, work stoppages and similar disturbances shall be entirely within the discretion of the City and the City shall not be required to make settlement of such disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the City, unfavorable to the City; and

(c) An “Event of Default” shall have occurred under the Resolution.

Section 8.02. Remedies on Default.

(a) If an event of default referred to in Section 8.01 occurs and is continuing, then and in every such case any Bondholder may, by written notice to the City, take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observance of the obligation, agreement or covenant of the City then in default under this Contract, whether for specific performance of any covenant or agreement contained herein or therein or in aid of the execution of any power herein granted. No remedy conferred upon or reserved to the Bondholders in this subsection (a) 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 Contract and now or hereafter existing at law or in equity or by statute, subject to the provisions of the Resolution.

(b) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bondholders to exercise any respective remedy reserved to them in this Article VIII, it shall not be necessary to give any notice, other than any notice required herein.

(c) Any amounts collected pursuant to action taken under subsection (a) of this Section 8.02 shall be applied in accordance with the Resolution to the extent the provisions of the Resolution relate to such amounts.

Section 8.03. Attorneys' Fees and Expenses. If the City should default under any of the provisions of this Contract and the owners of a majority in principal amount of the Bonds Outstanding shall employ attorneys or incur other expenses for the collection of the amounts payable hereunder or the enforcement, performance, or observance of any obligation or agreement on the part of the City herein contained, the City will, on demand therefor, pay the amount of the reasonable fees and expenses of such attorneys and such other reasonable expenses so incurred.

Section 8.04. No Waiver of Breach. If any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.05. City Authorized to Cure Default of Authority. With regard to any default on the part of the Authority under this Contract or under the Resolution, the Authority hereby vests the City with full power, for the account of the Authority, to perform any obligation in remedy of such default in the name and stead of the Authority with full power to do any and all things and acts to the same extent that the Authority could do and perform any such acts.

Section 8.06. Failure to Enforce Agreement Not a Waiver. The failure of the Authority or the Bondholders to enforce any agreement, condition, covenant, or term by reason of any default or breach by the City shall not be deemed to void or affect the right to enforce the same agreement, condition, covenant, or term on the occasion of any subsequent default or breach.

[END OF ARTICLE VIII]

ARTICLE IX

PREPAYMENT

Section 9.01. Optional Prepayment. The City shall have, and is hereby granted, subject to the provisions of the Resolution, the option to prepay all or any portion of the amounts payable under Section 5.01(a), at the times and under the conditions provided for in the Resolution, by taking the actions required by of the Resolution to effect the full or partial redemption of the Bonds.

Section 9.02. Exercise of Optional Prepayment. To exercise the option granted in Section 9.01, the City shall give written notice to the Authority and the Bond Registrar of the exercise of such option and a direction to effect redemption of Bonds, which notice shall specify therein (i) the maturity or maturities of the Bonds to be redeemed, (ii) the date of redemption, which date shall not be less than 45 days from the date the notice is given, (iii) the principal amount of the Bonds or portions thereof to be redeemed, (iv) the applicable redemption price or prices, and (v) the provision or provisions of the Resolution pursuant to which the Bonds are to be redeemed.

Upon receipt of a notice given by the City pursuant to this Section 9.02, the Bond Registrar shall forthwith take or cause to be taken all actions necessary under the Resolution to effect the redemption of Bonds in accordance with such notice.

[END OF ARTICLE IX]

ARTICLE X

TERM; MISCELLANEOUS

Section 10.01. Term of this Contract. This Contract shall be in full force and effect from the date of delivery hereof until such time as the Bonds shall have been paid or provision for such payment shall have been made in accordance with the Resolution and all payments due or to become due to the Paying Agent and Bond Registrar have been made.

Section 10.02. Notices. All notices or other communications required or permitted to be given pursuant to this Contract shall be in writing and shall be considered as properly given if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, by overnight delivery, by delivering same in person to the intended addressee, or by prepaid telegram, telex or telecopy. Notice so mailed shall be effective three days after its deposit. Notice given in any other manner, including overnight delivery and telecopy, shall be effective only if and when received by the addressee. Each such notice or other communication given hereunder shall be given to all of the other parties. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that hereinafter either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of notice to the other party in the manner set forth hereinabove.

If to the Authority:	Downtown Savannah Authority P. O. Box 1027 Savannah, Georgia 31402 Attention: Secretary
If to the City:	Mayor and Aldermen of the City of Savannah P. O. Box 1027 Savannah, Georgia 31402 Attention: City Manager
With a copy to:	W. Brooks Stillwell 6 East Bay Street Gamble Building, 3rd Floor Savannah, Georgia 31401
If to the Bond Registrar Paying Agent:	The Bank of New York Mellon Trust Company, N.A. 10161 Centurion Parkway Jacksonville, Florida 32256 Attention: Corporate Trust Dept.

Section 10.03. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns.

Section 10.04. Severability. If any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.05. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in any fund after payment in full of the principal of, premium, if any, and interest on the Bonds (or provision for payment shall have been made as provided for in the Resolution), the fees, charges and expenses of the Paying Agent and Bond Registrar and all other amounts required to be paid under the Resolution, shall be paid to the City.

Section 10.06. Payments Made by Garage Manager Held by Agent. During the term of the Cash Management Agreement, all Garage Accounts (as such term is defined in the Cash Management Agreement) shall be held by Wells Fargo Bank National Association, as Administrative Agent (collectively with its successors and/or assigns, the “**Agent**”), under the Cash Management Agreement, following which all Capital Reserve Fees, Risk Premium Fees, Ad Valorem Tax Payments, and Bond Repayment Amounts to be made by the Garage Manager shall be paid directly to the City pursuant to the Garage Management Agreement.

Section 10.07. Delegation of Duties by Authority. It is agreed that under the terms of this Contract and also under the terms of the Resolution, the Authority has delegated certain responsibilities to the City. The fact of such delegation shall be deemed a sufficient compliance by the Authority to satisfy the responsibilities so delegated and the Authority shall not be liable in any way by reason of acts done or omitted by the City or the City Representative. The Authority shall have the right at all times to act in reliance upon the authorization, representation or certification of the City Representative.

Section 10.08. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of its Continuing Disclosure Certificate (the “**Continuing Disclosure Certificate**”) to be executed and delivered on the date of issuance and delivery of the Bonds. Notwithstanding any other provision of this Contract, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default hereunder; however, any Bondholder may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section 10.07.

Section 10.09. Amendments, Changes, and Modifications. Subsequent to the initial issuance of Bonds and prior to the payment in full of the Bonds, this Contract may not be amended, changed, modified, or altered except as provided in Article IX of the Resolution.

Section 10.10. Execution Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.11. Captions. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

Section 10.12. Law Governing Construction of Contract. This Contract shall be governed by, and construed in accordance with, the laws of the State.

[END OF ARTICLE X]

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

DOWNTOWN SAVANNAH AUTHORITY

(S E A L)

By: _____
Chairman

Attest: _____
Secretary-Treasurer

MAYOR AND ALDERMEN
OF THE CITY OF SAVANNAH

(S E A L)

By: _____
City Manager

Attest: _____
Clerk of Council