

House Bill 790

By: Representatives Cameron of the 1st and Tarvin of the 2nd

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Chickamauga Public Facilities Authority; to provide for a short title;
2 to confer powers and impose duties on the authority; to provide for the membership and the
3 appointment of members of the authority and their terms of office, qualifications, duties,
4 powers, and compensation; to provide for vacancies, organization, meetings, and expenses;
5 to provide for definitions; to provide for the issuance and sale of revenue bonds and other
6 obligations and their negotiability, sale, and use of proceeds from such sales; to provide for
7 conditions for issuance of such obligations; to prohibit the pledge of credit for the payment
8 of bonds; to provide for trust indentures; to provide for payment of bond proceeds; to provide
9 for bondholder remedies and protection; to provide for refunding bonds; to provide for bond
10 validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for the
11 authority's purpose; to provide for charges; to provide for rules and regulations; to provide
12 for tort immunity; to provide that property of the authority is for public purpose; to provide
13 for exemptions from levy and sale; to provide for supplemental powers; to provide for effect
14 on other governments; to provide for liberal construction; to provide for severability; to
15 provide for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 790

- 1 -

17 **SECTION 1.**

18 Name of Act.

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

21 **SECTION 2.**

22 Creation of authority; purpose.

23 There is created a body corporate and politic to be known as the "City of Chickamauga
24 Public Facilities Authority," which shall be deemed to be a public corporation. Such
25 corporation shall be separate and distinct from any public corporation or other entity
26 heretofore created by the General Assembly and shall be an instrumentality of the State of
27 Georgia exercising governmental powers. The authority is created for the purpose of
28 promoting the public good and general welfare of the citizens of the City of Chickamauga
29 and assisting the City of Chickamauga in providing facilities, equipment, and services to the
30 citizens of the City of Chickamauga and the citizens located in the territories served by the
31 City of Chickamauga in the most efficient means possible. In connection with the exercise
32 of any of its powers, the members of the authority may make findings or determinations
33 regarding the public good and general welfare of the City of Chickamauga and the use of
34 facilities, equipment, and services, and such findings or determinations, if made, shall be
35 conclusive and binding.

SECTION 3.

Definitions.

38 As used in this Act, the term:

39 (1) "Authority" means the City of Chickamauga Public Facilities Authority created in
40 this Act.

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

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

43 (A) The cost of construction;

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

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

48 (D) The cost of all machinery and equipment;

49 (E) Financing charges, including interest prior to and during construction or acquisition
50 of any project and for six months after such project is placed in service and operational
51 at the level intended;

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

56 (G) Administrative expenses relating to any project or to the financing or refinancing
57 thereof, and such other expenses as may be necessary or incident to the financing of a
58 project authorized by this Act, the acquisition, construction, renovation, reconstruction,
59 or remodeling of a project, and the placing of the same in operation. Any such
60 obligation or expense shall be regarded as a part of the cost of the project and may be
61 paid or reimbursed as such out of any funds of the authority, including proceeds of any

62 revenue bonds issued under the provisions of this Act for any such project or projects
63 and the proceeds of the sale of any contracts, lease agreements, or installment sale
64 agreements or the amounts payable thereunder, either directly or by the creation of
65 interests therein.

66 (4) "Project" means any capital project, located inside or outside the territorial
67 boundaries of the city, determined by the authority to promote the public good or general
68 welfare of the citizens of the city or to be necessary or convenient for the efficient
69 operation of the city, or any of its enterprises or systems, including, but not limited to, the
70 acquisition, construction, renovation, improvement, extension, addition, or equipping of:

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

74 (B) Emergency facilities, including emergency, fire, sheriff, and rescue facilities;

75 (C) Recreational facilities, including parks, athletic fields, buildings, or facilities or
76 other similar facilities;

77 (D) Public safety facilities, including jails, sheriff's offices, facilities, or equipment,
78 state patrol or other law enforcement facilities or equipment;

79 (E) Healthcare facilities and equipment;

80 (F) Educational, cultural, or historical facilities and equipment;

81 (G) Transportation facilities and equipment;

82 (H) Administrative facilities and equipment;

83 (I) Any "undertaking" permitted by the Revenue Bond Law; and

84 (J) Any undertaking, project, or service for which the governmental body contracting
85 with the authority is authorized by law to undertake in the performance of its
86 governmental, proprietary, or administrative functions; all personal property to be used
87 in connection therewith; the lease and sale of any part or all of such facilities, including
88 real and personal property, so as to ensure the efficient and proper development,

89 maintenance, and operation of such project deemed by the authority to be necessary,
90 convenient, or desirable.

91 (5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms
92 of this Act or under the Revenue Bond Law.

93 (6) "Revenue Bond Law" means Article 3 of Chapter 82 of Title 36 of the O.C.G.A.

94 **SECTION 4.**

95 Powers of the authority.

96 The authority shall have the power:

97 (1) To hold, own, lease, transfer, and convey real and personal property or interests;

98 (2) To sue and be sued;

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

100 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
101 any project;

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

106 (6) To acquire property and projects in its own name by gift or by purchase on such
107 terms and conditions and in such manner as it may deem proper. If the authority shall
108 deem it expedient to construct any project on real property or any interest therein or
109 usufruct which is subject to the control of the city, the city is authorized to convey such
110 real property or interest therein to the authority for no consideration or for such
111 consideration as may be agreed upon by the authority and the city, taking into
112 consideration the public benefit to be derived from such conveyance. The city may
113 transfer such property or interest therein without the necessity of putting the same out for

114 bid and without regard to any determination as to whether or not such property or interest
115 therein is in surplus;

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

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

121 (9) To make and execute with public and private persons and corporations contracts,
122 lease agreements, rental agreements, installment sale agreements, and other instruments,
123 relating to its projects and incident to the exercise of the powers of the authority,
124 including contracts for constructing, renting, leasing, and selling its projects for the
125 benefit of the city; provided, without limiting the generality of this paragraph, that the
126 authority is specifically granted the power to enter into contracts, lease agreements, rental
127 agreements, installment sale agreements, and related agreements for a term not exceeding
128 50 years as provided in Section III of Article IX of the Constitution of Georgia;

129 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or
130 assets of the authority, or to assign its rights under its contracts, lease agreements, or
131 installment sale agreements or its right to receive payments thereunder, either directly or
132 through trusts or custodial arrangements whereby interests are created in such contracts,
133 lease agreements, or installment sale agreements or the payments to be received
134 thereunder through the issuance of trust certificates, certificates of participation, custodial
135 receipts, or other similar instruments. In connection with any such sale, lease, transfer
136 or assignment, the authority need not comply with any other provision of law requiring
137 public bidding or any announcement to the public of the sale of such property, assets, or
138 rights;

139 (11) To accept loans and grants of money or property of any kind from the United States,
140 the State of Georgia, or any political subdivision or municipal corporation of the State of
141 Georgia;

142 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
143 notes, or other types of indebtedness payable solely from funds or revenues of the
144 authority pledged for that purpose and to pledge and assign any of its revenues, income,
145 rent, charges, and fees to provide for the payment of the same and to provide for the
146 rights of the holders of such revenue bonds; provided, however, that the power conferred
147 by this paragraph may not be exercised after the expiration of four years from the
148 effective date of this Act;

149 (13) To enter into:

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

152 (B) Credit enhancement or liquidity agreements relating to any obligations of the
153 authority,

154 Provided that the obligation of the authority under any such agreements shall not be a
155 general obligation of the authority but shall be a limited obligation of the authority payable
156 from a specific source of funds identified for such purpose. The authority shall be exempt
157 from any requirement of Georgia law requiring a swap management plan or other similar
158 plan relating to interest rate swap agreements;

159 (14) To issue and manage grants of funds of the authority that are not otherwise
160 encumbered;

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

163 (16) The authority may be sued the same as any private corporation on any contractual
164 obligation of the authority. The authority shall have the same rights to sue any other
165 person or entity as any private corporation; and

166 (17) To issue its revenue bonds, notes, or other obligations to finance or refinance any
167 project which may be financed by the city under the Revenue Bond Law of the State of
168 Georgia.

169 **SECTION 5.**

170 Members of the authority; terms of office.

171 The authority shall consist of six members, who shall be the mayor and five members of the
172 City Council of the City of Chickamauga. The terms of office of the members shall be
173 concurrent with their terms of office as mayor and members of the city council. A majority
174 of the members of the authority shall constitute a quorum, and no vacancy on the authority
175 shall impair the right of the quorum to exercise all the rights and perform all the duties of the
176 authority and, in every instance, a majority vote of a quorum shall authorize any legal act of
177 the authority, provided that all things necessary to authorize and issue revenue bonds shall
178 require the approval of at least four members of the authority. The chairperson shall vote
179 only in the event of a tie vote of the authority. The mayor shall be the chairperson of the
180 authority, unless the mayor, with the approval of at least four board members, passes the
181 office of chairperson to another member. Unless otherwise provided by the authority, the
182 city manager of the city shall serve as the secretary and treasurer of the authority, but shall
183 not be a voting member of the authority. The authority may elect a vice chairperson or any
184 number of assistant secretaries or treasurers as it may from time to time deem necessary or
185 desirable. The members of the authority shall not be entitled to compensation for their
186 services but shall be entitled to and shall be reimbursed for the actual expenses necessarily
187 incurred in the performance of their duties. The authority shall make rules and regulations
188 for its own governance and it shall have perpetual existence. Any change in name or
189 composition of the authority shall in no way affect the vested rights of any person under the
190 provisions of this Act or impair the obligations of any contracts existing under this Act.

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SECTION 6.

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Issuance and sale of revenue bonds.

193 The authority shall have power and is authorized from time to time to provide for the
194 issuance and sale of negotiable revenue bonds in the manner provided by the Revenue Bond
195 Law, for the purpose of paying all or any part of the cost of any one or more projects,
196 including the cost of constructing, reconstructing, equipping, extending, adding to, or
197 improving any such project, or for the purpose of refunding, as herein provided, any such
198 bonds of the authority or any other authority or public body previously issued to finance or
199 refinance the cost of a project. The resolution of the authority authorizing the issuance of
200 such revenue bonds must be approved by at least four board members of the authority. The
201 principal of and interest on such revenue bonds shall be a limited obligation of the authority
202 payable solely from the source or sources of funds specified in the indenture or resolution
203 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
204 issue shall be issued and validated under and in accordance with the provisions of the
205 Revenue Bond Law. Such revenue bonds shall mature on such dates, bear interest at such
206 rate or rates, whether fixed or variable, be subject to redemption and have such other terms
207 as the authority may provide in the indenture or resolution relating thereto. Such revenue
208 bonds shall not be subject to any provision of Georgia law limiting the rate of interest
209 payable thereon and may be sold in a negotiated sale or in a public sale as the authority may
210 determine.

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SECTION 7.

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Power to incur loans or issue notes.

213 The authority shall also have the power to incur indebtedness from time to time for the
214 purpose of financing or refinancing any project or refunding any obligations previously

215 issued for such purpose, or for any other purpose, whether in the form of a loan or through
216 the issuance of notes, and the principal of and interest on such notes or loans shall be a
217 limited obligation of the authority payable solely from the source or sources of funds
218 specified in the resolution or trust indenture of the authority authorizing such loan or the
219 issuance of such notes. Any such loan or notes shall not be required to be validated as a
220 condition to the issuance thereof and shall have such terms as may be specified by the
221 authority in the resolution or indenture authorizing the same.

222 **SECTION 8.**

223 Negotiable instruments; bonds and other obligations exempt from taxation.

224 All revenue bonds issued under the provisions of this Act shall have all the qualities and
225 incidents of negotiable instruments under the negotiable instruments law of this state. All
226 such bonds, and any loan incurred or note issued as provided in this Act, are declared to be
227 issued or incurred for an essential public and governmental purpose, and such obligations and
228 the interest thereon shall be exempt from all taxation within this state.

229 **SECTION 9.**

230 Revenue bonds or notes not a debt or general obligation.

231 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
232 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
233 Georgia or of any political subdivision or municipal corporation thereof, including the city,
234 but shall be payable solely from the sources as may be designated in the resolution or
235 indenture of the authority authorizing the issuance of the same. The issuance of such
236 obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any
237 political subdivision or municipal corporation thereof, including the city, to levy or to pledge

238 any form of taxation for the payment thereof. No holder of any bond or receiver or trustee
239 in connection therewith shall have the right to enforce the payment thereof against any
240 property of the State of Georgia or any political subdivision or municipal corporation thereof,
241 including the city, nor shall any such bond constitute a charge, lien, or encumbrance, legal
242 or equitable, upon any such property. All such obligations shall contain on their face a recital
243 setting forth substantially the foregoing provisions of this section. Nothing in this section
244 shall be construed to prohibit the State of Georgia or any political subdivision, municipal
245 corporation or agency thereof, including the city, from obligating itself to pay the amounts
246 required under any contract entered into with the authority pursuant to Article IX of the
247 Constitution of the State of Georgia, or any successor provision, including from funds
248 received from taxes to be levied and collected for that purpose to the extent necessary to pay
249 the obligations contractually incurred with the authority, and from any other source.

250 **SECTION 10.**

251 Issuance of bonds or obligations under trust indentures or resolutions.

252 In the discretion of the authority, any issue of such revenue bonds, notes, or other obligations
253 may be secured by a trust indenture by and between the authority and a trustee, which may
254 be any trust company or bank having the powers of a trust company within or outside of the
255 State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and
256 earnings to be received by the authority, including the proceeds derived from the financing,
257 sale, or lease, from time to time, of any project. Either the resolution providing for the
258 issuance of revenue bonds or other obligations or such trust indenture may contain such
259 provisions for protecting and enforcing the rights and remedies of the owners of such bonds
260 or obligations as may be reasonable and proper and not in violation of law, including
261 covenants setting forth the duties of the authority or any lessee or purchaser in relation to the
262 acquisition and construction of any project, the maintenance, operation, repair, and issuance

263 of any project, and the custody, safeguarding, and application of all moneys, including the
264 proceeds derived from the sale or lease of any project or from the sale of any such bonds,
265 notes, or other obligations and may also contain provisions concerning the conditions, if any,
266 upon which additional bonds notes or other obligations may be issued, whether on a parity
267 with, or subordinate to any other obligations issued by the authority. Such trust indenture
268 or resolution may set forth the rights and remedies of the owners of such obligations and of
269 the trustee. In addition to the foregoing, such trust indenture or resolution may contain such
270 other provisions as the authority may deem reasonable and proper for the security of the
271 owners of such bonds or other obligations or otherwise necessary or convenient in
272 connection with the issuance of such obligations. All expenses incurred in carrying out such
273 trust indenture or resolution may be treated as a part of the cost of maintenance, operation,
274 and repair of the project affected by such trust indenture or resolution.

275 **SECTION 11.**

276 Security for the payment of bonds or other obligations.

277 The authority may assign or pledge any property or revenues to the payment of the principal
278 and interest on revenue bonds of the authority as the resolution authorizing the issuance of
279 the bonds or the trust indenture may provide. The use and disposition of such property or
280 revenues assigned to the payment of bonds or other obligations shall be subject to the trust
281 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
282 lien created by the authority for the payment of such bonds or obligations may be a first lien
283 or a subordinate lien as the authority may provide, and any such trust indenture or resolution
284 may provide, at the option of the authority, for the issuance of additional bonds or other
285 obligations sharing any lien on a parity or subordinate lien basis.

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SECTION 12.

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Refunding bonds or obligations.

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

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SECTION 13.

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Principal office; venue.

298 The principal office of the authority shall be in the city, and the venue of any action against
299 it shall be in Walker County, Georgia. Any action pertaining to the validation of any bonds
300 issued under the provisions of this Act and for the validation of any contract entered into by
301 the authority shall be brought in the Superior Court of Walker County, and such court shall
302 have exclusive original jurisdiction of such actions. Service upon the authority of any
303 process, subpoena, or summons shall be effected by serving the same personally upon any
304 member of the authority.

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SECTION 14.

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Validation of revenue bonds.

307 Revenue bonds of the authority shall be confirmed and validated in accordance with the
308 procedure now or hereafter set forth in Revenue Bond Law, as the same now exists or may
309 hereafter be amended. The petition for validation shall also make a party defendant to such
310 action the city, if the city has or will contract with the authority with respect to the project
311 for which bonds are to be issued and are sought to be validated. The bonds, when validated,
312 and the judgment of validation shall be final and conclusive with respect to the validity of
313 such bonds against the authority and against all other persons or entities, regardless of
314 whether such persons or entities were parties to such validation proceedings.

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SECTION 15.

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No impairment of rights.

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

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SECTION 16.

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Trust funds; permitted investments.

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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 the 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 investments for a development authority created under O.C.G.A. Section 36-62-1, et seq., as amended.

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SECTION 17.

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Power to set rates, fees, and charges.

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The authority is authorized to prescribe and fix and collect 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, or 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.

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SECTION 18.

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Property held for governmental purposes.

348 All property or interests in property owned by the authority shall be public property held and
349 owned for governmental purposes and shall to the extent permitted by general law be exempt
350 from ad valorem taxation. The exercise of the powers conferred upon the authority
351 hereunder shall constitute an essential governmental function for a public purpose, and the
352 authority to the extent permitted by general law shall be required to pay no taxes or
353 assessments upon any of the property acquired by it or under its jurisdiction, control,
354 possession, or supervision or upon its activities in the operation and maintenance of property
355 acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges
356 for the use of such property or buildings or other income received by the authority. Nothing
357 herein provided shall include an exemption from sales and use tax on property purchased by
358 or for the use of the authority.

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SECTION 19.

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Immunity of authority and members.

361 The authority shall have the same immunity and exemption from liability for torts and
362 negligence as the State of Georgia, and the officers, agents, and employees of the authority,
363 when in performance of the work of the authority, shall have the same immunity and
364 exemption from liability for torts and negligence as officers, agents, and employees of the
365 State of Georgia.

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SECTION 20.

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Authority property not subject to levy and sale.

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To the extent permitted by general law, the property of the authority shall not be subject to

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levy and sale under legal process.

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SECTION 21.

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Authority area of operation.

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The scope of the authority's operations shall be limited to the territory embraced within the

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territorial limits of the city and within the territorial limits of any project owned and/or

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operated by the city, as the same now or may hereafter exist; provided, however, that nothing

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in this section shall prevent the authority from contracting with any entity, public or private,

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outside of the city with respect to any project located in the city or any project located

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outside of the city, if the authority shall determine that entering into such contract is in the

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best interest of the authority and in furtherance of its public purposes.

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SECTION 22.

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Supplemental powers.

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This Act does not in any way take away from the authority any power which may be

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conferred upon it by law but is supplemental thereto.

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SECTION 23.

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No power to impose taxes.

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The authority shall not have the right to impose any tax on any person or property.

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SECTION 24.

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Act to be liberally construed.

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

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SECTION 25.

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Severability of provisions.

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Should any sentence, clause, phrase, or part of this Act be declared for any reason to be

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unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part

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hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

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remain in full force and effect, and it is the express intention of this Act to enact each

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provision of this Act independently of any other provision hereof.

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SECTION 26.

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Conflicting laws.

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