

**ORDINANCE 2011-XX-XX**

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE**

AN ORDINANCE TO AUTHORIZE AND DIRECT THE EXECUTION BY THE CITY OF DUNWOODY, GEORGIA OF A CERTAIN INSTALLMENT SALE AGREEMENT WITH GEORGIA MUNICIPAL ASSOCIATION, INC. AND A CERTAIN AGREEMENT REGARDING ENVIRONMENTAL ACTIVITY IN CONNECTION THEREWITH; TO PROVIDE A STATEMENT OF LEGISLATIVE FINDINGS AND INTENT; TO MAKE AN APPROPRIATION IN CONNECTION THEREWITH; TO DESIGNATE SUCH INSTALLMENT SALE AGREEMENT AS A QUALIFIED TAX-EXEMPT OBLIGATION; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Dunwoody, Georgia (the “City”) has been duly created and is validly existing as a municipal corporation of the State of Georgia; and

WHEREAS, the Mayor and Council of the City are charged with the duties of contracting debts and managing the affairs of the City (the “Governing Body”); and

WHEREAS, the City desires to enter into an installment sale agreement (the “Installment Sale Agreement”) with Georgia Municipal Association, Inc. (“GMA”), as authorized by O.C.G.A. §36-60-13, in order to provide installment sale financing in the amount of up to \$5,200,000 (the “Installment Sale Amount”) with respect to certain real property located on Parcel 001 of Land Lot 345, District 18 of DeKalb County, Georgia, addressed at 4000 Dunwoody Park, a 16.18 acre parcel of land (the “Subject Property”); and

WHEREAS, GMA will transfer certain of its interest in the Installment Sale Agreement under the terms of the Transfer Agreement (the “Transfer Agreement”) by and between GMA and \_\_\_\_\_ (the “Bank”) and will secure such assignment and the stated obligations under the Installment Sale Agreement with security title to the Subject Property pursuant to a Deed to Secure Debt from GMA to the Bank (the “Security Deed”); and

WHEREAS, pursuant to the Installment Sale Agreement, the City shall acquire the Subject Property from GMA subject to the lien of the Security Deed referred to above; and

WHEREAS, the Installment Sale Agreement includes interest payments at a rate not to exceed 4.0% per annum, and is renewable annually and calls for the principal and interest to be payable in fourteen installments not to exceed \$5,200,000; and

WHEREAS, to induce the Bank to fund the Installment Sale Amount under the Installment Sale Agreement, the City must enter into and deliver an Agreement Regarding Environmental Activity (the "Environmental Agreement") in favor of GMA; and

WHEREAS, in order to give effect to, and comply with, the foregoing agreements and instruments, and in order to authorize payments under the Installment Sale Agreement, the City does hereby appropriate and make provision for the payment of the amount of the Minimum Annual Appropriated Amount for the current Fiscal Year (\$\_\_\_\_\_), as such terms are used in the Installment Sale Agreement; and

WHEREAS, the documents referred to in the foregoing shall be substantially in the form of the documents prepared and attached, with such other minor changes as the Mayor shall deem to be necessary by the execution thereof.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA, AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME:

Section 1. The City, after investigation and following the holding of the required public hearing, has determined and hereby finds that obtaining the financing by the Installment Sale Agreement furthers the public good and general welfare and is a compelling need, and that the Installment Sale Agreement is desirable, necessary and within the lawful scope of its powers. The City further finds that the Installment Sale Agreement is on favorable terms. It is the intent of this Ordinance to authorize and direct the taking of such actions and the execution of such documents as may be necessary to effectuate these purposes.

Section 2. The financing substantially as contemplated above, as well as the execution, delivery and performance of the Installment Sale Agreement and the Environmental Agreement (together, the "City Documents") are hereby authorized, ratified and approved. The execution by the Mayor and City Clerk or Assistant City Clerk of the City of the said City Documents in such form as shall be approved by the officer who executes the same, and such other documents as deemed by such officers to be necessary or desirable to effect the purposes of this Ordinance is authorized, directed and approved. Such execution shall constitute conclusive evidence that the executed documents have been authorized, directed and approved by this Ordinance. The aforesaid officers are further authorized to do all things necessary or appropriate to effectuate the purposes hereof including but not limited to setting the final interest rate within the parameters established by this Ordinance.

Section 3. The Security Deed to be executed and delivered by GMA to the Bank, concerning the assignment of and security for the Installment Sale Agreement, are hereby approved.

Section 4. The Installment Sale Agreement is hereby designated as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

Section 5. Any officer of the City is hereby authorized to sign and file or cause to be filed a completed IRS Form 8038-G (“Information Return for Governmental Bond Issues”), as required by Section 149(e) of the Code. Further, the execution of a non-arbitrage certification in order to comply with Section 148 of the Code and the applicable Treasury Regulations promulgated thereunder is hereby authorized.

Section 6. The public hearing held with respect to the Installment Sale Agreement as required by O.C.G.A. § 36-60-13 hereby is ratified and approved. The approval of the Installment Sale Agreement takes into account the results of such public hearing.

Section 7. The appropriation referred to in the preambles of these findings hereby is committed and made.

Section 8. No stipulation, obligation or agreement herein contained or contained in the Installment Sale Agreement, the Environmental Agreement or any related documents shall be deemed to be a stipulation, obligation or agreement of any council member, officer, agent or employee of the City in his or her individual capacity, and no such council member, officer, director, agent or employee shall be personally liable under the terms of the Installment Sale Agreement, the Environmental Agreement or any related documents or be subject to personal liability or accountability by reason of the execution, delivery and performance thereof.

Section 9. From and after the execution and delivery of the Installment Sale Agreement, the City Manager, the Mayor of the City and the City Clerk or Assistant City Clerk each are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the execution and delivery of the Installment Sale Agreement, the Environmental Agreement or any other agreement necessary to effect the transactions contemplated herein and to document compliance with the Code, and the same are hereby ratified.

Section 10. All actions and doings of the officers of the City which are in conformity with the purposes and intents of this Ordinance (including the conduct of a public hearing concerning the Installment Sale Agreement) in the furtherance of the execution, delivery and performance of the Installment Sale Agreement and the Environmental Agreement and any related documents shall be, and the same hereby are, in all respects approved, ratified and confirmed.

Section 11. If any one or more of the agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held

invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof.

Section 12. All ordinances or parts thereof of the City which conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

Section 13. This Ordinance shall be effective immediately upon adoption.

Adopted and approved by the Governing Body of the City on April 25, 2011.

CITY OF DUNWOODY, GEORGIA

By: \_\_\_\_\_  
Ken Wright, Mayor

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

Approved as to form:

\_\_\_\_\_  
Brian Anderson, City Attorney

CERTIFICATE

I, the undersigned City Clerk of City of Dunwoody, Georgia (the "City"), DO HEREBY CERTIFY that the foregoing pages of typewritten matter constitute a true and correct copy of the Ordinance duly adopted by the Mayor and Council of the City at a meeting held on April 25, 2011, duly called and open to the public in compliance with Section 50-14-1 of the Official Code of Georgia Annotated, at which a quorum was present and acting throughout, the original of which Ordinance has been duly recorded in the official Minute Book, which is in my custody and control, and that the Ordinance has not been rescinded or modified and is now of full force and effect.

GIVEN under the seal of the City, this April 25, 2011.

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Sharon Lowery, City Clerk

[SEAL]