

House Bill 1501 (AS PASSED HOUSE AND SENATE)

By: Representatives Silcox of the 53rd, Martin of the 49th, Jones of the 47th, Hilton of the 48th,
and Panitch of the 51st

A BILL TO BE ENTITLED
AN ACT

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1501

- 1 -

18 **SECTION 1.**

19 Name of Act.

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

22 **SECTION 2.**

23 Creation of authority; purpose.

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

36 **SECTION 3.**

37 Definitions.

38 As used in this Act, the term:

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

- 40 (2) "City" means the City of Roswell, Georgia, or its successor.
- 41 (3) "Cost of the project" shall include:
- 42 (A) The cost of construction;
- 43 (B) The cost of all land or interests therein, properties, rights, easements, and
44 franchises acquired; and
- 45 (C) The cost of acquiring, constructing, or erecting buildings, improvements, materials,
46 labor, and services; and
- 47 (D) The cost of all machinery and equipment; and
- 48 (E) Financing charges, including interest prior to and during construction or acquisition
49 of any Project and for six months after such Project is placed in service and operational
50 at the level intended; and
- 51 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
52 and legal expenses relating to a Project or to the financing or refinancing of any Project
53 and other expenses necessary or incident to determining the feasibility or practicability
54 of any Project; and
- 55 (G) Administrative expenses relating to any Project or to the financing or refinancing
56 thereof, and such other expenses as may be necessary or incident to the financing of a
57 Project authorized by this Act, the acquisition, construction, renovation, reconstruction,
58 or remodeling of a Project, and the placing of the same in operation. Any such
59 obligation or expense shall be regarded as a part of the cost of the Project and may be
60 paid or reimbursed as such out of any funds of the Authority, including proceeds of any
61 revenue bonds issued under the provisions of this Act for any such Project or Projects
62 and the proceeds of the sale of any contracts, lease agreements, or installment sale
63 agreements or the amounts payable thereunder, either directly or by the creation of
64 interests therein.
- 65 (4) "Project" means any capital project, located inside or outside the territorial
66 boundaries of the City, determined by the Authority to promote the public good or

67 general welfare of the citizens of the City or to be necessary or convenient for the
68 efficient operation of the City, or any of its enterprises or systems, including, but not
69 limited to, the acquisition, construction, renovation, improvement, extension, addition,
70 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; and

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

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

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

79 (E) Healthcare facilities and equipment; and

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

81 (G) Transportation and parking facilities and equipment; and

82 (H) Administrative facilities and equipment; and

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 Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the
93 "Revenue Bond Law."

SECTION 4.

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
118 choose, officers, agents, and employees, including engineering, architectural, and

119 construction experts, fiscal agents, underwriters, or other advisors, and attorneys, and to
120 fix their 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,
127 rental agreements, installment sale agreements, and related agreements for a term not
128 exceeding 50 years as provided in Section III of Article IX of the Constitution of
129 Georgia;

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

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

143 (12) To borrow money for any of its corporate purposes and to issue revenue bonds,
144 notes, or other types of indebtedness payable solely from funds or revenues of the
145 Authority pledged for that purpose and to pledge and assign any of its revenues, income,

146 rent, charges, and fees to provide for the payment of the same and to provide for the
147 rights of the holders of such revenue bonds;

148 (13) To enter into:

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

151 (B) Credit enhancement or liquidity agreements relating to any obligations of the
152 Authority, provided that the obligation of the Authority under any such agreements
153 shall not be a general obligation of the Authority but shall be a limited obligation of the
154 Authority payable from a specific source of funds identified for such purpose. The
155 Authority shall be exempt from any requirement of Georgia law requiring a swap
156 management plan or other similar plan relating to interest rate swap agreements;

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

159 (15) The Authority may be sued the same as any private corporation on any contractual
160 obligation of the Authority. The Authority shall have the same rights to sue any other
161 person or entity as any private corporation; and

162 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
163 Project which may be financed by the City under the Revenue Bond Law of the State of
164 Georgia.

165 **SECTION 5.**

166 Members of the Authority; terms of office.

167 The Authority shall consist of eight members as follows: seven shall be the Mayor and
168 members of the City Council and one shall be a resident of the City, to be appointed by the
169 Mayor and City Council. The terms of office of the members who are the Mayor and
170 members of the City Council shall be concurrent with their terms of office as Mayor and

171 members of the City Council. The terms of office of the remaining member of the Authority
172 shall be four years and until his or her successor is appointed and qualified. Successors to
173 such members shall be appointed as the original members were appointed, as provided
174 herein, and any vacancies shall be filled by the appointing authority, as provided herein, for
175 the unexpired term. A majority of the members of the Authority shall constitute a quorum,
176 and no vacancy on the Authority shall impair the right of the quorum to exercise all the rights
177 and perform all the duties of the Authority and, in every instance, a majority vote of a
178 quorum shall authorize any legal act of the Authority, including all things necessary to
179 authorize and issue revenue bonds. One of the members of the Authority who is also the
180 Mayor or a member of the City Council shall be the chairperson of the Authority, such
181 chairperson to be elected by the Mayor and City Council. The Authority shall elect a
182 secretary and treasurer who need not necessarily be a member of the Authority. The
183 Authority may elect a vice chairperson or any number of assistant secretaries or treasurers
184 as it may from time to time deem necessary or desirable. The members of the Authority shall
185 not be entitled to compensation for their services but shall be entitled to and shall be
186 reimbursed for the actual expenses necessarily incurred in the performance of their duties.
187 The Authority shall make rules and regulations for its own governance and it shall have
188 perpetual existence. Any change in name or composition of the Authority shall in no way
189 affect the vested rights of any person under the provisions of this Act or impair the
190 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 Article 3 of
195 Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," for the purpose

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

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SECTION 7.

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Power to incur loans or issue notes.

212 The Authority shall also have the power to incur indebtedness from time to time for the
213 purpose of financing or refinancing any Project or refunding any obligations previously
214 issued for such purpose, or for any other purpose, whether in the form of a loan or through
215 the issuance of notes, and the principal of and interest on such notes or loans shall be a
216 limited obligation of the Authority payable solely from the source or sources of funds
217 specified in the resolution or trust indenture of the Authority authorizing such loan or the
218 issuance of such notes. Any such loan or notes shall not be required to be validated as a
219 condition to the issuance thereof and shall have such terms as may be specified by the
220 Authority in the resolution or indenture authorizing the same.

221 **SECTION 8.**

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

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

228 **SECTION 9.**

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

230 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
231 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
232 Georgia or of any political subdivision or municipal corporation thereof, including the City,
233 but shall be payable solely from the sources as may be designated in the resolution or
234 indenture of the Authority authorizing the issuance of the same. The issuance of such
235 obligations shall not directly, indirectly, or contingently obligate the State of Georgia or any
236 political subdivision or municipal corporation thereof, including the City, to levy or to pledge
237 any form of taxation whatever for the payment thereof. No holder of any bond or receiver
238 or trustee in connection therewith shall have the right to enforce the payment thereof against
239 any property of the State of Georgia or any political subdivision or municipal corporation
240 thereof, including the City, nor shall any such bond constitute a charge, lien, or encumbrance,
241 legal or equitable, upon any such property. All such obligations shall contain on their face
242 a recital setting forth substantially the foregoing provisions of this section. Nothing in this
243 section shall be construed to prohibit the State of Georgia or any political subdivision,
244 municipal corporation or agency thereof, including the City, from obligating itself to pay the

245 amounts required under any contract entered into with the Authority pursuant to Article IX
246 of the Constitution of the State of Georgia, or any successor provision, including from funds
247 received from taxes to be levied and collected for that purpose to the extent necessary to pay
248 the obligations contractually incurred with the Authority, and from any other source.

249 **SECTION 10.**

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

251 In the discretion of the Authority, any issue of such revenue bonds, notes, or other
252 obligations may be secured by a trust indenture by and between the Authority and a trustee,
253 which may be any trust company or bank having the powers of a trust company within or
254 outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents,
255 revenues, and earnings to be received by the Authority, including the proceeds derived from
256 the financing, sale, or lease, from time to time, of any Project. Either the resolution
257 providing for the issuance of revenue bonds or other obligations or such trust indenture may
258 contain such provisions for protecting and enforcing the rights and remedies of the owners
259 of such bonds or obligations as may be reasonable and proper and not in violation of law,
260 including covenants setting forth the duties of the Authority or any lessee or purchaser in
261 relation to the acquisition and construction of any Project, the maintenance, operation, repair,
262 and issuance of any Project, and the custody, safeguarding, and application of all moneys,
263 including the proceeds derived from the sale or lease of any Project or from the sale of any
264 such bonds, notes, or other obligations and may also contain provisions concerning the
265 conditions, if any, upon which additional bonds, notes, or other obligations may be issued,
266 whether on a parity with or subordinate to any other obligations issued by the Authority.
267 Such trust indenture or resolution may set forth the rights and remedies of the owners of such
268 obligations and of the trustee. In addition to the foregoing, such trust indenture or resolution
269 may contain such other provisions as the Authority may deem reasonable and proper for the

270 security of the owners of such bonds or other obligations or otherwise necessary or
271 convenient in connection with the issuance of such obligations. All expenses incurred in
272 carrying out such trust indenture or resolution may be treated as a part of the cost of
273 maintenance, operation, and repair of the Project affected by such trust indenture or
274 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.

286 **SECTION 12.**

287 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.

296 **SECTION 13.**

297 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 Fulton 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 Fulton 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.

305 **SECTION 14.**

306 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 Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
309 known as the "Revenue Bond Law," as the same now exists or may hereafter be amended.
310 The petition for validation shall also make a party defendant to such action the City, if the
311 City has or will contract with the Authority with respect to the Project for which bonds are
312 to be issued and are sought to be validated. The bonds, when validated, and the judgment
313 of validation shall be final and conclusive with respect to the validity of such bonds against
314 the Authority and against all other persons or entities, regardless of whether such persons or
315 entities were parties to such validation proceedings.

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SECTION 15.

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No impairment of rights.

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

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SECTION 16.

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Trust Funds; permitted investments.

330 All moneys received by the Authority pursuant to this Act, whether as proceeds from the sale
331 of revenue bonds or obligations of the Authority, as grants or other contributions, or as
332 revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and
333 applied solely as provided in this Act and in such resolutions and trust indentures as may be
334 adopted and entered into by the Authority pursuant to this Act. Any such moneys or funds
335 may be invested from time to time in such investments as may be permitted under the
336 indenture, agreement, or resolution establishing the fund or account in which such funds are
337 held, or if not held in such a fund or account, in such investments as would be permitted
338 investments for a development authority created under O.C.G.A. Section 36-62-1, et seq.,
339 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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Essential governmental function; no taxes or assessments.

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All property or interests in property owned by the Authority shall be public property held and owned for governmental purposes and 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 erected or acquired 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 not include an exemption from sales and use tax on property purchased by 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.

368 The property of the Authority shall not be subject to levy and sale under legal process.

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SECTION 21.

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Authority area of operation.

371 The scope of the Authority's operations shall be limited to the territory embraced within the
372 territorial limits of the City and within the territorial limits of any Project owned and/or
373 operated by the City, as the same now or may hereafter exist; provided, however, that
374 nothing in this section shall prevent the Authority from contracting with any entity, public
375 or private, outside of the City with respect to any Project located in the City or any Project
376 located outside of the City, if the Authority shall determine that entering into such contract
377 is in the best interest of the Authority and in furtherance of its public purposes.

378 **SECTION 22.**

379 Supplemental powers.

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

382 **SECTION 23.**

383 No power to impose taxes.

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

385 **SECTION 24.**

386 Act to be liberally construed.

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

388 **SECTION 25.**

389 Severability of provisions.

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

395 **SECTION 26.**

396 Effective date.

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

399 **SECTION 27.**

400 Conflicting laws.

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