

EMPLOYMENT AGREEMENT FOR KWASI OBENG

THIS AGREEMENT, made by and between **DEKALB COUNTY**, a political subdivision of the State of Georgia, (hereinafter referred to as "Employer"); and Kwasi Obeng (hereinafter referred to as "Employee"); shall constitute the terms and conditions under which Employee shall provide services to the Employer, as provided in this Employment Agreement ("Agreement").

WITNESSETH: That for and in consideration of the mutual covenants and agreements herein set forth, the Employer and Employee hereby agree as follows:

Section A. Duties

1. DeKalb County, Georgia, Employer, by and through its Board of Commissioners, hereby agrees to employ Kwasi Obeng, Employee, as Chief of Staff to the Board of Commissioners of DeKalb County, Georgia. Employee agrees to perform the functions and duties of the Chief of Staff, on a full-time basis, as those functions and duties are set forth in the DeKalb County Class Specification for the position of Chief of Staff. Employee agrees to perform other legally permissible and proper duties and functions as authorized by the Board of Commissioners.
2. The Board of Commissioners shall fix any such other terms and conditions of employment as may be determined from time to time relating to the performance of Employee provided that such conditions are not inconsistent with or in conflict with the terms of this Agreement, the Code of DeKalb County, Georgia, or other applicable laws. Employee shall report directly to the Board of Commissioners.

Section B. Term

3. The services to be performed pursuant to this Agreement shall begin on September 8, 2020 and end on September 8, 2023, unless earlier terminated in accordance with the provisions of this Agreement.
4. The Chief of Staff shall serve at the pleasure of the DeKalb County Board of Commissioners and shall be considered terminable at the will of the Board of Commissioners. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time for any reason or no reason, subject only to the benefits and salary continuation payments set forth in Section C, Paragraph 6 of this Agreement. The Board of Commissioners may only terminate the services of Employee by an affirmative vote of four members of the DeKalb County Board of Commissioners, and the Board of Commissioners shall have the sole discretion to determine whether Employee shall be terminated. No other employee or official within DeKalb County shall have the authority to supervise, terminate or in any way discipline Employee. In the event of Employee's death while employed as Chief of Staff under this Agreement, this Agreement shall terminate as of the date of Employee's death and no salary continuation payments or benefits will be paid under Section C, Paragraph 6 of this Agreement.

5. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time for any reason or no reason from the position of Chief of Staff, except that Employee shall give Employer one month's advance written notice of his resignation unless the Board of Commissioners agree otherwise. If Employee voluntarily resigns from the position of Chief of Staff or dies while employed in the Chief of Staff position under this Agreement, Employee agrees that he shall not be entitled to any of the salary continuation payments or benefits set forth in Section C, Paragraph 6 of this Agreement.

Section C. Termination and Severance Provisions

6.
 - a. Release and Waiver of Claims. If Employer terminates Employee's services as Chief of Staff during the term of this Agreement, Employee will receive additional salary and benefits as described below if Employee signs a release and waiver in the form of Attachment A ("the Waiver") within twenty-one days after receiving written notice of the termination and Employee does not exercise the right to revoke the Waiver during the seven-day period after he signs it.
 - b. Salary Continuation. If, after receiving written notice of his termination from employment, Employee timely signs and does not timely revoke the Waiver, Employer will make salary payments to Employee for the shortest of the following three time periods: (1) six months beginning on the Effective Date of the Waiver; (2) the period between the Effective Date of the Waiver and September 8, 2023; (3) the period between the Effective Date of the Waiver and the date Employee begins other employment with a salary at least equal to last pre-termination salary from Employer. Salary payments under this Paragraph shall be made at the same time and in the same manner as salary payments are normally made to County employees. Salary payments under this paragraph shall be made at the same pay rate Employee received immediately before his termination by Employer, except that if Employee begins lower-paid employment less than six months after that termination and before September 8, 2023, Employee's gross salary payments under this Paragraph shall be reduced by the gross amount of salary Employee earns from other employment during the period for which salary payments are made under this Paragraph. Employee agrees to immediately notify Employer of his start date, salary rate, and any changes in salary rate for other employment so long as salary payments are being made under this Paragraph. In no event shall salary payments be made under this Paragraph for any period that is after September 8, 2023, more than six (6) months after the Effective Date of the Waiver, or after Employee's death. Salary payments under this Paragraph shall not include any automobile allowance. All salary payments provided for in this Paragraph shall be subject to withholding of applicable taxes, premiums and pension contributions. If Employee does not timely sign the Waiver or if Employee timely revokes the Waiver, Employee will receive no salary payments for any period after the effective date of his termination from the Chief of Staff position.
 - c. Health and Life Insurance. In the event that Employer terminates Employee's employment and Employee timely signs and does not timely revoke the Waiver, Employer will maintain Employee's health and life insurance coverage (at the same level and the same employee cost of

such coverage that applied to Employee immediately prior to such termination) until six (6) months after such termination, until September 8, 2023, or until Employee obtains other health and life insurance coverage, whichever occurs earliest. If Employer terminates Employee's employment but Employee does not timely sign the Waiver or Employee timely revokes the Waiver, Employee will receive employee insurance benefits (at the same level and at the same employee cost of such coverage that applied to Employee immediately prior to such termination) through the effective date of termination or through the twenty-eighth day after Employee receives written notice of his termination, whichever is later.

d. Employment in advisory capacity. Employer and Employee agree that during any time period for which salary payments are made under this Paragraph 6, Employee shall remain an employee of Employer in an advisory capacity without any additional compensation or benefits other than the salary continuation payments and insurance benefits set forth in this Paragraph 6. Employer agrees that Employee may seek and accept other employment during said advisory period, though Employee must make himself available on a reasonable basis to answer questions and provide information to Employer during the advisory period. Employee shall not hold the title of Chief of Staff during any advisory period.

7. In the event that this Agreement is terminated because Employee is initially convicted of, or pleads guilty or nolo contendere to a felony criminal offense, Employee shall not be entitled to any salary continuation or insurance benefits under Section C, Paragraph 6 of this Agreement.

Section D. Salary, Performance Reviews and Benefits

8. Employer agrees to pay Employee as annual compensation an initial salary of one hundred thirty-six thousand dollars (\$136,000.00) in installments at the same time as other County employees are paid. Employer agrees to consider increasing the salary and benefits of Employee upon review in such amounts and to such extent as approved by the Board of Commissioners within budgetary limitations. Such review shall occur in accordance with the normal personnel practices of Employer. The Board of Commissioners will review Employee's performance at least once annually based upon a performance appraisal form to be developed during 2020.
9. All applicable rules, regulations of Employer and applicable provisions of the Code of DeKalb County, Georgia relating to military leave, annual leave, sick leave, retirement, pension and pension contributions, disability, life insurance, health insurance, and holidays, as they now exist or hereafter may be provided to "permanent status" County employees during the term of this Agreement, shall apply to Employee unless such applicable rules, regulations, and ordinance provisions conflict with the terms of this Agreement. In the event of a conflict, the terms of this Agreement shall govern, except that pension and retirement benefits and related requirements shall at all times be governed by the terms and conditions of the applicable pension and retirement plans.

10. Employee shall receive an automobile allowance in an amount to be approved by the Board of Commissioners, while employed as Chief of Staff.

Section E. General Provisions

11. Employee shall be eligible for relocation assistance, subject to the terms, conditions, and limitations in the DeKalb County Relocation and Moving Expenses Policy (dated June 2015).
12. Nothing in this Agreement or related to this Agreement shall be construed as creating any personal liability on the part of any elected official, officers or agents of Employer, nor shall this Agreement be construed as giving any other rights or benefits hereunder to anyone other than the parties to this Agreement except as provided herein.
13. Employee understands and agrees that he has not been provided with any legal advice by the DeKalb County Law Department or any other attorney or employee of Employer in connection with the terms, conditions, effect or provisions of this Agreement. Employee agrees that he has had an adequate opportunity to review this Agreement with anyone of his choosing and Employee understands the terms, conditions, effect and provisions of this Agreement.
14. In the event any provision of this Agreement is held to be unenforceable for any reason, the remainder of this Agreement shall be in full force and effect and enforceable in accordance with its terms.
15. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia.
16. This Agreement (including Attachment A, the Waiver) constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding upon the parties. No amendment or modifications of this Agreement shall be enforceable unless such amendment or modification is in writing and approved by official action of Employer.
17. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate, each to be considered as an original by their authorized representative, on the _____ of _____, 2020.

KWASI OBENG

DEKALB COUNTY, GEORGIA

Signature

MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

ATTEST:

County Attorney
DeKalb County, Georgia

Clerk to the Chief Executive Officer
And Board of Commissioners
DeKalb County, Georgia

**Agreement to Waive and Release Claims (“Waiver”)
(Attachment A to 2020 Employment Agreement)**

In return for the good and valuable consideration that paragraph 6 of the attached 2020 Employment Agreement between DeKalb County (the “COUNTY”) and Kwasi Obeng (“the EMPLOYEE”) states will be provided to EMPLOYEE if he timely executes this Waiver after receiving written notice of his termination from employment and does not timely revoke this Waiver, EMPLOYEE agrees to the following:

I) EMPLOYEE’S Release and Waiver of Claims. Kwasi Obeng, for himself and his family, assigns, attorneys, and agents, hereby releases and waives any and all actions, causes of action, demands, claims, potential claims, rights, damages, and claims for damages and/or other monetary and non-monetary recovery (including, but not limited to, back pay, front pay, employee benefits, compensatory damages, punitive damages, attorneys’ fees, reinstatement, declaratory relief, injunctive relief, mandamus and other extraordinary remedies), of whatsoever kind and nature that he has, may have, or claims to have against the COUNTY, its present and former elected officials, employees, agents, attorneys, officers, departments, and/or assigns (collectively, "the RELEASEES"), arising on or before the date he signs this Waiver.

The claims and potential claims waived and released by Kwasi Obeng herein include, but are not limited to, any possible claims under 42 U.S.C. §1983; 42 U.S.C. §1981; Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Americans with Disabilities Act; the Family and Medical Leave Act; the Fair Labor Standards Act; the Equal Pay Act; O.C.G.A. § 45-1-4; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; the First Amendment to the United States Constitution; contract laws; tort laws; and any other federal, state, and/or local laws (whether constitutional, statutory, or common law) that he could assert against the RELEASEES based on events or omissions occurring on or prior to the date he signs this Waiver or relating to his employment with the COUNTY or separation from that employment. The release and waiver of claims in this

paragraph I shall not be construed to limit or waive the sovereign, official, or qualified immunity of the COUNTY or any of the RELEASEES; this Waiver is not made to pay any claims that are barred by sovereign immunity.

This Waiver may not be interpreted to waive or release any claims that arise after the date EMPLOYEE executes this Waiver or any claims or rights that otherwise cannot, by law, be waived or released. This Waiver further does not waive any eligibility or rights EMPLOYEE has under DeKalb County's pension or insurance plans, to the extent that normal application of the DeKalb County Code, laws and policies would provide for such eligibility or rights. This Waiver also does not waive any eligibility EMPLOYEE has to receive a payment for the net value of certain accrued annual leave, to the extent that normal application of the DeKalb County Code, laws, and policies would result in such a payment.

II. EMPLOYEE'S Affirmations and Covenant Not to Sue.

EMPLOYEE agrees that he will not assert, pursue, or attempt to assert or pursue any lawsuit or claim that has been released and waived in paragraph I above, and will not authorize anyone else to do so on his behalf.

EMPLOYEE affirms that in compliance with the Older Workers Benefit Protection Act, he has been advised in writing to consult with an attorney prior to executing this Waiver and he has been given a period of at least 21 days within which to consider this Waiver before signing (though he may sign the Waiver earlier if he chooses to).

EMPLOYEE understands that under the Older Workers Benefit Protection Act, he has seven (7) days after signing this Waiver in which to revoke it. If he chooses to revoke this Waiver during that period, he must provide written notice of that revocation to the County Attorney at the DeKalb County Law Department (1300 Commerce Drive, 5th Floor, Decatur, GA 30030), by hand delivery or by e-mail to the County Attorney's county e-mail address, no later than the end of the seventh (7th) calendar day after he signs this Waiver. EMPLOYEE understands that this Waiver will not become effective until this seven-day revocation period has expired.

III. Timing and manner of performance.

A. EMPLOYEE shall execute this Waiver in two originals and then deliver both executed originals to the County Attorney at the DeKalb County Law Department, 1300 Commerce Drive, 5th Floor, Decatur, GA 30030, within three business days after he executes this Waiver.

B. EMPLOYEE will have seven (7) calendar days after executing this Waiver to revoke the Waiver in the manner described in Paragraph II of this Waiver. Unless this Waiver is revoked during that seven-day period, this Waiver will become effective, final and binding on the eighth (8th) calendar day after the Waiver's execution by EMPLOYEE ("the Effective Date").

C. If EMPLOYEE revokes this Waiver in accordance with Paragraph II during the seven (7) calendar days after he executes this Waiver, EMPLOYEE will not be entitled to the consideration in paragraph 6 of his 2020 Employment Agreement that is conditioned on his_ timely signing and not timely revoking this Waiver.

IV. Denial of Liability.

EMPLOYEE agrees that this Waiver will in no way be construed to indicate or to imply any wrongdoing or any admission of liability on the part of the COUNTY or any of the other RELEASEES.

V. Tax Responsibility.

EMPLOYEE agrees that he will be solely responsible for paying all required federal, state, and local taxes that may be owed by him on any salary payments made to him under the terms of paragraph 6 of his 2020 Employment Agreement.

VI. Severability.

This Waiver is severable. If a court of competent jurisdiction determines that any portion of this Waiver is unenforceable for any reason, that determination will not affect the enforceability of any other paragraph or provision of this Waiver.

VII. Entire Understanding.

This Waiver and the terms related to this Waiver in Kwasi Obeng's 2020 Employment

Agreement constitute the entire understanding between Kwasi Obeng and the COUNTY concerning the subject matter covered herein, and supersede any and all verbal or written discussions, proposals, and/or offers of compromise or settlement regarding this matter. This Waiver cannot be changed except in a writing signed by Kwasi Obeng and an authorized representative(s) of the COUNTY.

THE UNDERSIGNED HAS READ THE FOREGOING WAIVER, UNDERSTANDS IT FULLY, AND SIGNS IT VOLUNTARILY.

IN WITNESS whereof, Kwasi Obeng sets _____ hand and affixes _____ signature.

Kwasi Obeng

Date: _____

Witness (Notary)

