

**PONCE DE LEON CENTER CONTRACT
(DEKALB)**

THIS SURGERY CENTER CONTRACT (as amended and supplemented, this “**Contract**”) is made and entered into _____, 2021, by and between DEKALB COUNTY, GEORGIA, a political subdivision created and existing under the laws of the State of Georgia (“**DeKalb**”), and THE FULTON-DEKALB HOSPITAL AUTHORITY, a public body corporate and politic (the “**Authority**”).

WITNESSETH:

WHEREAS, pursuant to the provisions of Georgia Laws 1941, pp. 241 et seq., DeKalb and Fulton County, Georgia (“**Fulton**” and together with DeKalb, the “**Counties**”) were authorized to establish a hospital authority and, pursuant thereto, the Board of Commissioners of Fulton County by resolution adopted on August 6, 1941 and the Board of Commissioners of DeKalb County by resolution adopted on August 9, 1941 duly established “The Fulton-DeKalb Hospital Authority” in accordance with the law then in effect; and

WHEREAS, the Hospital Authorities Law, Article 4, Chapter 7 of Title 31 of the Official Code of Georgia Annotated (the “**Act**”), provides for the powers, duties and functions of hospital authorities including the Authority; and

WHEREAS, the Authority has been and is now legally created, existing and operating in accordance with all of the terms and provisions of the Act and will continue to comply with all of the requirements thereof; and

WHEREAS, the Authority now owns a complete medical center in the City of Atlanta including hospital facilities known as “Grady Memorial Hospital” and outpatient clinical facilities and related parking and other facilities (collectively, the “**Grady Health System**”); and

WHEREAS, the Authority has leased the Grady Health System pursuant to a Lease and Transfer Agreement dated April 7, 2008 to Grady Memorial Hospital Corporation (the “**Corporation**”) which now operates the Grady Health System; and

WHEREAS, pursuant to Section 31-7-85 of the Act, a county, for the purpose of using the facilities of an authority, is authorized by action of its governing body to enter into contracts with an authority for a period not exceeding 40 years as shall be necessary to provide for the continued maintenance and use of such facilities of the authority; and

WHEREAS, the Counties and the Authority entered into that certain contract dated June 20, 1984, as amended by amendments dated December 30, 1987, July 14, 1988, December 29, 1988, June 22, 1989 and December 14, 1989 (such contract, as amended, being referred to herein as the “**Operating Contract**”) pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities for the indigent sick of the Counties and the Counties agreed to pay the operating costs and expenses of Grady Health System, all in accordance with the terms thereof; and

WHEREAS, the Operating Contract and this Contract are authorized under the Act and payable by DeKalb from specified sums derived from an annual ad valorem tax levy within the statutory seven mill limit; and

WHEREAS, the Authority and DeKalb have determined that, in order to benefit the health and welfare of DeKalb County residents, the financing of a portion of the costs of certain improvements to the

Grady Health System should be accomplished through payments made by DeKalb pursuant to this Contract which payments will be applied to the renovation of the Grady Health System's infectious disease program facility located at the Ponce de Leon Center at 341 Ponce de Leon Avenue, Atlanta, Georgia (the "**IDP Project**"); and

WHEREAS, the Authority and DeKalb desire to enter into this Contract pursuant to which the Authority agrees, among other things, to facilitate the renovation of the IDP Project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of DeKalb, and DeKalb agrees, among other things, to make payments to the Authority totaling \$4,000,000 which constitute DeKalb's portion of the public contribution for the IDP Project (the "**DeKalb Proceeds**"); and

WHEREAS, in order to provide additional public funds to pay the costs of the IDP Project, the Authority shall enter into an intergovernmental contract with Fulton (the "**Fulton Contract**") pursuant to which Fulton will agree to make payments to the Authority which will result in \$8,000,000 available to pay for the costs of the renovation of the IDP Project (the "**Fulton Proceeds**"), and as of the date of this Contract, the Board of Commissioners of Fulton has authorize the execution and delivery of the Fulton Contract; and

WHEREAS, the Authority and DeKalb have agreed that the Corporation, combined with private philanthropy and other sources, will finance the cost of the balance of the IDP Project as part of a public/private partnership and the Corporation has raised and will collect funds in the amount of at least \$12,000,000, which are and will be restricted for use in the renovation of the IDP Project (the "**Private Proceeds**"), and which will include the Corporation's commitment to provide its own funds to be used for IDP Project costs; and

WHEREAS, the execution and delivery of this Contract by the Authority was authorized by the Authority by a resolution adopted by its Board of Directors adopted on [_____, 2021], and the execution and delivery of this Contract by DeKalb was authorized by a resolution adopted by its Board of Commissioners adopted on [_____, 2021]; and

WHEREAS, the Authority's right to receive payments from DeKalb under the Operating Contract from ad valorem taxes will be subordinate to the Authority's right to receive payments under this Contract which has a first and prior lien on the specified sums derived from the annual ad valorem tax levy within the statutory seven mill limit; and

WHEREAS, the Corporation has received a Certificate of Need from the Georgia Department of Community Health for the IDP Project and has entered into a guaranteed maximum price construction contract with respect to the renovation of the IDP Project; and

WHEREAS, this Contract is authorized by the provisions of Article IX, Section III, Paragraph I(a) and (c) of the Constitution of the State of Georgia and by the Act;

NOW, THEREFORE, in consideration of the premises and undertakings as hereinafter set forth, it is agreed by and between DeKalb and the Authority, each acting by and through its duly authorized officers, pursuant to resolutions duly adopted and properly passed:

1. *Effective Date.* This Contract shall take effect as of the date of its execution and delivery (i.e., [_____, 2021]) and shall continue until midnight on [December 31, 2022].

2. *Effect on Other Contracts.* Except to the extent set forth in Section 4 hereof, nothing contained herein shall affect or impair the obligations of each of the parties hereto set forth in the

Operating Contract, all of the terms and conditions of which shall remain in full force and effect and are hereby ratified and reaffirmed.

3. *Authority Obligations.* The Authority covenants and agrees, as follows:

(a) The Authority will provide or cause the Corporation to provide updates to DeKalb, as requested, regarding the construction budget, timeline of construction, utilization of the DeKalb Proceeds, the Fulton Proceeds and the Private Proceeds and contractor/subcontractor information as provided by the Corporation in connection with the renovation of the IDP Project.

(b) The Corporation has represented to the Authority that it has received a Certificate of Need from the Georgia Department of Community Health for the IDP Project and has entered into a guaranteed maximum price construction contract with respect to the renovation of the IDP Project in form and substance satisfactory to the Authority and DeKalb.

(c) The Corporation has obtained a total of at least \$12,000,000 in the form of cash, commitments or pledges from third parties or from its own funds to pay for a portion of the renovation of the IDP Project. **[*STATUS OF COMMITMENTS?***

(d) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by DeKalb, the Authority will maintain and have available or cause to have maintained and available facilities to care for the indigent sick of DeKalb, as may be properly certified as entitled to receive treatment pursuant to the rules and regulations of the Authority.

(e) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by DeKalb, the Authority will maintain and have available or cause to have maintained and available facilities to care for all emergency cases affecting the residents of DeKalb and those cases affecting transients if the accident took place, or the emergency arose, within the corporate limits of DeKalb.

(f) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by DeKalb, when requested to do so by DeKalb, the Authority will furnish or cause to be furnished treatment, medicine, care and the facilities of the Authority for the treatment and care of employees of DeKalb who are injured in the line of duty and in the service of DeKalb and in all other cases when requested so to do by DeKalb where DeKalb shall assume responsibility for the cost of hospitalization and treatment of any injured person. Nothing herein shall prevent the Authority or the Corporation from receiving and collecting from insurance or other sources funds covering the cost of medical care or hospitalization of such person and the Authority and the Corporation shall likewise have full rights against any sums paid by tortfeasors or others under liability for the medical care and/or hospitalization of such persons.

(g) All funds received by the Authority under the provisions of Section 4 hereof, if any, shall not be commingled with any other funds of the Authority or of any other person or entity, and any such moneys so received shall be forthwith used and applied, together with the Fulton Proceeds and the Private Proceeds, solely for the purpose of paying for the costs of the renovation of the IDP Project.

(h) The Authority shall continue to comply with the provisions of the Operating Contract as the same may from time to time be amended, including, without limitation, the non-discrimination, audit and budget requirements described therein.

(i) The Authority will not create, or suffer to be created, any lien, security interest, encumbrance or charge upon operating revenues of the Authority without the prior written consent of DeKalb, except for the following:

(i) Liens to secure indebtedness having an original maturity of less than or equal to one year and not renewable at the option of the Authority for a term greater than one year beyond the date of original incurrence; provided, however, that there shall be a period of at least five consecutive days in each fiscal year during which no such indebtedness is outstanding;

(ii) Liens to secure indebtedness for capital expenditures in an amount not to exceed \$25 million in the aggregate outstanding at any time, and the incurrence of such indebtedness, in and of itself, shall not result in an increase in payments due by the Counties hereunder or under the Operating Contract.

Nothing contained in this paragraph shall limit the ability of the Authority or the Corporation to acquire additional equipment or other capital assets, including real property, pursuant to an installment purchase, capitalized lease or similar obligation and nothing contained herein shall limit the right of the Authority or the Corporation to grant a security interest in or create a lien on such property so acquired provided the Authority does not pledge or create a lien on operating revenues of the Authority unless otherwise authorized. The incurrence of such obligation, in and of itself, shall not result in an increase in payments due by DeKalb hereunder or under the Operating Contract.

4. *DeKalb's Obligations*

(a) DeKalb hereby covenants and agrees to pay to the Authority on or before [March 31, 2021, June 30, 2021, September 30, 2021, December 31, 2021, March 31, 2022, June 30, 2022, September 30, 2022 and December 31, 2022], respectively, an amount equal to \$[500,000] for a total of \$4,000,000 to be paid by DeKalb purpose of paying its portion of the costs of the renovation of the IDP Project; *provided that* at the written request of DeKalb, the Corporation must provide evidence of the status of the renovation of the IDP Project, and, if DeKalb determines that adequate progress on the renovation of the IDP Project has not been made as of the date of such request, DeKalb may, in its discretion, withhold any payment required under this subsection until the Corporation shows that adequate progress on the renovation of the IDP Project has been made.

(b) The obligation of DeKalb to make the payments required by the Operating Contract or any future contract between the parties hereto for the purpose of providing funds to pay the operating costs and operating expenses of the Grady Health System (collectively, the “**Subordinate Obligations**”) are hereby expressly made junior and subordinate to the obligations of DeKalb under this Contract.

(c) The obligation of DeKalb to make the payments required under this Section 4 shall be absolute and unconditional and continue unabated until such time as the amounts described in Section 4(a) shall have been fully paid; and this Contract shall not be terminated and such payments shall not be suspended, discontinued, abated or reduced for any reason whatsoever, including, without limitation (i) the damage to or destruction of the Grady Health System or any part thereof including the IDP Project, (ii) failure of proper operation and maintenance of the Grady Health System or any part thereof including the Project, (iii) force majeure, (iv) the occurrence of any acts or circumstances that may

constitute failure of consideration, eviction or constructive eviction, (v) the taking by eminent domain of title to or temporary use of the Grady Health System or any part thereof including the IDP Project, (vi) commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either thereof, or (vii) any failure of any party (including DeKalb) to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Contract, the Operating Contract or otherwise, or any defense or any right of setoff, counterclaim or recoupment arising out of any such failure. Nothing contained in this subparagraph shall be construed to release the Authority from the performance of any of the agreements on its part herein contained; and in the event the Authority should fail to perform any such agreement on its part, DeKalb may institute such action against the Authority as DeKalb may deem necessary to compel performance so long as such action does not abrogate the obligations of DeKalb contained in this subparagraph, including, without limitation, making such adjustments in payments under the Subordinate Obligations.

(d) DeKalb shall levy an ad valorem tax on all taxable property located within the boundaries of DeKalb subject to taxation for such purposes, as now existent and as same may hereafter be extended, at such rate or rates and within the statutory seven mill limitation now authorized by law or such greater limitation as may hereafter be authorized by law, as may be necessary to produce in each calendar year revenues which shall be sufficient to fulfill DeKalb's obligations hereunder, from which revenues there shall be appropriated, prior to any other appropriations for the Authority for the payment of any Subordinate Obligations. Nothing herein contained, however, shall be construed as limiting the right of DeKalb to pay the obligations hereunder assumed out of its general funds or from other sources lawfully available to it for such purpose.

(e) In order to assure the payments as may be required to comply with subparagraph 4(a), there shall be and there is hereby created a lien on any and all revenues realized by DeKalb under and pursuant to the provisions of subparagraph (d) above, which lien is prior and superior to any lien with respect to any taxes levied from which amounts are to be paid with respect to any Subordinate Obligations. Nothing contained in this subparagraph (e) of Section 4 is intended, or shall be construed so as, to affect the direct general obligation indebtedness of DeKalb. Nothing contained in this subparagraph (e) of Section 4 is intended, or shall be construed so as to, create any lien on, or priority hereunder or otherwise with respect to, any taxes levied for purposes other than for the benefit of the Authority.

(f) DeKalb shall not make any payment to the Authority with respect to any Subordinate Obligations or otherwise if the sum of (i) the aggregate payments made and to be made by DeKalb under subparagraph 4(a) hereof in the then calendar year, (ii) amounts previously paid, if any, in the then current calendar year by DeKalb to the Authority under the Operating Contract or any other Subordinate Obligations, and (iii) the payment then proposed to be made under any Subordinate Obligation or otherwise (other than the payments required to be made under subsection (i) above) would exceed an amount equal to the money which would be generated and collected by a levy on all taxable property located within the boundaries of DeKalb subject to taxation for such purposes as now existent and as the same may hereafter be extended of an ad valorem tax equal to 7 mills or such greater limitation as may hereafter be authorized by law (assuming that all property in DeKalb is valued for such purposes at a value equal to the assessed value of such property for the most recently ended fiscal year of DeKalb, as shown on the most recent tax rolls for DeKalb which have been submitted to the State Revenue Commissioner).

5. *Mutual Obligations.* The parties hereto mutually agree as follows:

(a) The term "indigent sick" shall mean such persons living within the boundaries of DeKalb that may be certified by the Authority as being entitled to receive the services of the Authority.

The medical attention herein referred to is construed to mean the usual care rendered to patients in hospitals, such as food, general nursing care and supervision (but not special nursing care), use of operating room and facilities, laboratories and x-ray facilities, x-ray treatment and use of the usual and customary out-patient clinical services and facilities.

(b) No covenants, stipulations, obligations or agreements of any member, trustee, director, officer, agent, attorney or employee of the Authority or DeKalb shall be deemed to be covenants, stipulations, obligations or agreements of any such member, trustee, director, officer, agent, attorney or employee, past or present, in his individual capacity.

(c) Operation of the IDP Project. The parties acknowledge that DeKalb is not obligated to contribute funds for the operation of the IDP Project once construction is completed.

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

(e) Law Governing Contract. The effect and meaning of this Contract and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State of Georgia, without giving effect to any conflict of laws principles thereof.

(f) Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, by nationally recognized overnight courier service or by delivery to physical address, return receipt requested postage or charges prepaid, addressed as follows or by facsimile with receipt confirmed:

If to the Authority: The Fulton-DeKalb Hospital Authority
145 Edgewood Avenue – Second Floor
Atlanta, Georgia 30303
Attn: Shawn Graham, Chief Financial Officer
(404) 489-1227

with copy to: Arnall Golden Gregory LLP
171 17th Street, Suite 2100
Atlanta, Georgia 30363
Attention: Sandra Z. Zayac
Telephone: (404) 873-8124
Fax: (404) 873-8125

If to DeKalb: Department of Finance
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030
Attention: Dianne McNabb, Chief Financial
Officer
(404) 371-2745

with copy to: Office of the County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
Attention: Viviane Ernstes, Esq., County Attorney
(404) 371-3017

(g) Any amendment or supplements to this Contract shall be in writing and executed by all parties.

(h) Should any phrase, clause, sentence, section or paragraph of this Contract be held invalid or unconstitutional, it shall in nowise affect the remaining provisions, which provisions shall remain in full force and effect.

[Signatures begin on following page]

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have caused this Contract to be executed in duplicate as of the date and year first above written.

DEKALB COUNTY

By: _____
MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

Attest:

BARBARA SANDERS-NORWOOD
Clerk

[SEAL]

APPROVED AS TO FORM:

VIVIANE ERNSTES
County Attorney
DeKalb County, Georgia

(Signatures continued on next page)

[COUNTERPART SIGNATURE PAGE TO PONCE DE LEON CONTRACT (DEKALB)]

**THE FULTON-DEKALB HOSPITAL
AUTHORITY**

By: _____
SHARON BENT-HARLEY, M.D.
Chair

Attest:

DR. ROMEO STOCKETT
Secretary

[SEAL]

(Signatures continued on next page)

[COUNTERPART SIGNATURE PAGE TO PONCE DE LEON CONTRACT (DEKALB)]

Agreed to and Accepted by:

**GRADY MEMORIAL HOSPITAL
CORPORATION**

By: _____

Name:

Title: