



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID: 2018-2806

Substitute

10/23/2018

Public Hearing: YES  NO

Department: Chief Executive Office

### SUBJECT:

Commission District(s): All Districts.

Anticipatory Resolution to approve the construction of a new center for advanced surgical services subject to final approval of the Surgery Center/Ponce Center Expansion Contract between DeKalb County and the Fulton-DeKalb Hospital Authority.

Information Contact: Zachary Williams, Chief Operating Officer and Executive Assistant

Phone Number: 404-371-2174

### PURPOSE:

This is an anticipatory resolution to approve the acquisition, construction and equipping of a new center for advanced surgical services subject to the condition that the County approve the Surgery Center/Ponce Center Expansion Contract with the Fulton-DeKalb Hospital Authority prior to the date of issuance and delivery of revenue certificates in a principal amount not to exceed \$45,000,000, that mature not later than December 31, 2048 and bear interest at a rate not to exceed 7.0% per annum and provide that the maximum annual payments of principal and interest shall not exceed \$4,500,000. This resolution requires the Surgery Center/Ponce Center Expansion Contract to be in a form substantially similar to the contract entered into between the County and the Fulton-DeKalb Hospital Authority in 2013.

### NEED/IMPACT:

This resolution would allow the Fulton-DeKalb Hospital Authority and/or the Grady Memorial Hospital Corporation to obtain a Certificate of Need from the Georgia Department of Community Affairs for the new surgery center. Construction and development of the new center for advanced surgical services will benefit the health and welfare of DeKalb County residents through the expanded provision of medical services and hospital facilities needed to serve the indigent sick of DeKalb County.

### FISCAL IMPACT:

DeKalb County will contribute its portion of the public contribution for the surgery center in an amount not to exceed \$45,000,000.

### RECOMMENDATION:

To approve the attached resolution and authorize the continued negotiation and preparation of the Surgery Center/Ponce Center Expansion Contract between DeKalb County and the Fulton-DeKalb Hospital Authority for construction of a new surgery center.

**RESOLUTION OF THE GOVERNING AUTHORITY APPROVING THE CONSTRUCTION AND DEVELOPMENT OF A NEW SURGERY CENTER PROJECT, THE EXPANSION OF THE PONCE CENTER/INFECTIOUS DISEASE PROGRAM AND THE PROVISION OF MEDICAL SERVICES AND HOSPITAL FACILITIES FOR THE INDIGENT SICK IN FULTON AND DEKALB COUNTIES; AUTHORIZING THE LEVY OF AN AD VALOREM TAX BY DEKALB COUNTY, GEORGIA, ON ALL PROPERTY SUBJECT TO TAXATION IN AN AMOUNT SUFFICIENT TO PAY ITS OBLIGATIONS UNDER THE SURGERY CENTER/PONCE CENTER EXPANSION CONTRACT; AND FOR OTHER PURPOSES.**

**WHEREAS**, pursuant to the provisions of Georgia Laws 1941, pp. 241 *et seq.*, DeKalb County, Georgia (the "County") and Fulton County, Georgia ("Fulton") were authorized to establish a hospital authority and, pursuant thereto, the Board of Commissioners of Fulton by resolution adopted on August 6, 1941 and the Board of Commissioners of the County by resolution adopted on August 9, 1941 duly established "The Fulton-DeKalb Hospital Authority" (the "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**, pursuant to the Official Code of Georgia Annotated Section 36-1-19.1, counties having a population of 400,000 or more are authorized to provide for the appropriation of money to any institution for purely charitable purposes, including health; and

**WHEREAS**, the population of the County pursuant to the 2010 U.S. census was 691,893, and the population of Fulton pursuant to the 2010 U.S. Census was 920,581; and

**WHEREAS**, pursuant to Section 31-7-84 of the Act, a county shall have the power to adopt a resolution and execute a contract for the use of facilities and services of an authority and provision shall be made annually by such county contracting with an authority for the payment for the services and facilities of an authority used by a county out of general funds or out of tax revenues realized for the purpose of providing medical care or hospitalization for the indigent sick and others entitled to the use of the services and facilities of an authority; 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 the facilities of an authority; and

**WHEREAS**, the Authority now owns a complete medical center 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 as of April 7, 2008 (the "Lease Agreement"), to Grady Memorial Hospital Corporation, a Georgia nonprofit corporation (the "Corporation") which now operates and maintains the Grady Health System; and

**WHEREAS**, the County and Fulton (together, the “Counties”), together with 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, and as extended pursuant to certain contract extensions (such contract, as amended and extended, 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, among other things, to pay the operating costs and expenses of the Grady Health System, all in accordance with the terms thereof; and

**WHEREAS**, the Authority and the County heretofore issued and sold \$41,380,000 in original principal amount of The Fulton-DeKalb Hospital Authority Refunding Revenue Certificates, Series 2013 (the “2013 Certificates”) on terms and conditions set forth in a Certificate Resolution adopted on November 11, 2013 and December 16, 2013 (collectively, the “2013 Certificate Resolution”) in order to refund a portion of certain outstanding revenue certificates issued by the Authority in 2003; and

**WHEREAS**, the Authority and the County entered into a Contract dated as of December 1, 2013 (the “2013 Contract”), pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities needed to serve the indigent sick the County and the County agreed, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of and interest on the 2013 Certificates; and

**WHEREAS**, the Operating Contract and the 2013 Contract are authorized under the Act and payable by the County from specified sums derived from an annual ad valorem tax levy within the statutory seven mill limit; and

**WHEREAS**, the Authority’s right to receive payments from the Counties under the Operating Contract from ad valorem taxes is subordinate to the Authority’s right to receive payments under the 2013 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 Authority and the County have determined that the acquisition, construction, equipping and development of a new center for advanced surgical services to be housed in an approximately 10-story, 275,000 square foot facility to be located at the former site of the Aldredge Building in Downtown Atlanta and the expansion of the Grady Health System infectious disease facility located at 341 Ponce de Leon Avenue in Midtown Atlanta (collectively, the “Project”) will benefit the health and welfare of the County residents; and

**WHEREAS**, it is estimated that the total of cost of the Project will be approximately \$231,000,000 of which approximately \$111,300,000 (the “Public Portion”) is expected to be paid through the Authority’s issuance of one or more series or issues of tax-exempt or taxable revenues certificates (the “Revenue Certificates”) and the remainder of such costs is expected to be paid through private philanthropic sources and funds provided by the Corporation (the “Private Portion”); and

**WHEREAS**, of the Public Portion of the Project Costs, it is proposed that the County support the provision of \$37,100,000 (the “DeKalb Net Proceeds”) and that Fulton support the provision of \$74,200,000 (the “Fulton Net Proceeds”); and

**WHEREAS**, in order to provide the DeKalb Net Proceeds, the County has been asked to enter into a contract (the “Surgery Center/Ponce Center Expansion Contract”), with the Authority pursuant to which the Authority would agree, among other things, to facilitate the construction and development of the Project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of the County, and the County would agree, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of and interest on a portion of the Revenue Certificates in a principal amount not to exceed \$45,000,000 (the “Series 2019 Certificates”) which shall include amounts required to pay issuance costs and any capitalized interest; and any obligation by the County under the Surgery Center/Ponce Center Expansion Contract, taking into account its obligations under the prior contracts listed herein, would be subject to the statutory seven mill limit under the Act or such greater limitation as may hereafter be authorized by law; and

**WHEREAS**, the County is expecting that in order to provide for the Fulton Net Proceeds, Fulton will also enter into an intergovernmental contract with the Authority for the purpose of supporting issuance by the Authority of Revenue Certificates in the principal amount currently not expected to exceed \$80,000,000 (the “Fulton Certificates”) and the execution and delivery of the Surgery Center/Ponce Center Expansion Contract by the County will be conditioned on the approval and execution by Fulton of a resolution and contract in similar form and substance to this resolution and the Surgery Center/Ponce Center Expansion Contract; and

**WHEREAS**, as part of a 50/50 (approximately) public/private partnership in support of the Project, the Corporation shall be required to provide evidence to the Authority that it has secured private donations, pledges and other privately raised funds in an amount of not less than \$90,000,000, which are restricted for use in connection with the acquisition, construction, equipping and development of the Project, and shall be required to commit that it will be responsible for any Project cost overruns and that it will reserve on its books for that purpose a total of \$25,000,000; and

**WHEREAS**, it is expected that the Authority will adopt a resolution approving its execution, delivery and performance of the Surgery Center/Ponce Center Expansion Contract (defined below) and the issuance of the Series 2019 Certificates relating to the Project; and

**WHEREAS**, it is expected that the Authority and the Corporation will enter into a Development and Funding Agreement, which will authorize the construction and development of the Project by the Corporation on behalf of the Authority and will specify the use and distribution of the Fulton Proceeds, the DeKalb Proceeds and the Private Proceeds for payment of Project costs on a pro rata basis; and

**WHEREAS**, the Surgery Center/Ponce Center Expansion 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, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DEKALB COUNTY, GEORGIA AND THE CHIEF EXECUTIVE OFFICER OF DEKALB COUNTY, GEORGIA (COLLECTIVELY, THE “GOVERNING AUTHORITY”),** and it is hereby resolved by authority of the same, that the County approves the acquisition, construction and equipping of the Project and agrees that the County will execute and deliver a contract between the County and the Authority (the “Surgery Center/Ponce Expansion Contract”) in a form substantially similar to the 2013 Contract and subject to the condition that the Series 2019 Certificates shall be issued in a principal amount not

to exceed \$45,000,000, mature not later than December 31, 2048 and bear interest at a rate not to exceed 7.0% per annum and provide that the maximum annual payments of principal and interest shall not exceed \$4,500,000; *and provided that* the Governing Authority shall approve the final form of the Surgery Center/Ponce Expansion Contract prior to the date of issuance and delivery of the Series 2019 Certificates;

**BE IT FURTHER RESOLVED** that for the purpose of providing funds for payment under the Surgery Center/Ponce Center Expansion Contract, the County is hereby authorized to and will levy an ad valorem tax upon all taxable property subject to taxation within the corporate limits of the County as now existent and as same may hereafter be altered, at such rate or rates and within the seven mill maximum millage limitation now authorized by law or such greater limitation as may hereafter be authorized by law as may be necessary to provide funds required to pay amounts owed under the Surgery Center/Ponce Center Expansion Contract, as such payments shall become due and payable, and such funds will be irrevocably pledged and appropriated to the payment of moneys due under the Surgery Center/Ponce Center Expansion Contract; provided that the County's duty to levy such tax shall abate to the extent that its revenues from other sources are used to make such payments provided for under the Surgery Center/Ponce Center Expansion Contract; and

**BE IT FURTHER RESOLVED** that all actions heretofore taken by the Governing Authority relating to the Project are hereby ratified, and the Chief Executive Officer of the County, the County Attorney and Clerk to the Governing Body are each hereby authorized and directed to take any and all actions, and to execute and deliver for and on behalf of the County such contracts, instruments and other documents, which any of such persons may deem necessary or desirable in order to effectuate the actions contemplated by this resolution and the execution and delivery of any such contracts, instruments or other documents by any of such officers as authorized herein shall be conclusive evidence that such are authorized and approved in accordance with this resolution; and

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**BE IT FURTHER RESOLVED** that any or all resolutions or ordinances or parts of resolutions or ordinances in conflict with this resolution are, to the extent of such conflict, hereby repealed, and this resolution shall take immediate effect and shall be in full force and effect from and after the date of its adoption.

**ADOPTED** by the Board of Commissioners of DeKalb County, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Jeff Rader  
Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Michael L. Thurmond  
Chief Executive Officer  
DeKalb County, Georgia

**ATTEST:**

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Barbara Sanders-Norwood, CCC  
Clerk to the Board of Commissioners and  
Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

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Viviane H. Ernstes  
County Attorney, DeKalb County, Georgia

**CLERK'S CERTIFICATE**

I, Barbara Sanders-Norwood, the duly appointed, qualified, and acting Clerk to the Board of Commissioners and the Chief Executive Officer of DeKalb County, Georgia (the "County"), DO HEREBY CERTIFY that the foregoing pages of typewritten matter constitute a true and correct copy of a resolution adopted on \_\_\_\_\_, 2018 by the Board of Commissioners of the County in a meeting duly called and assembled in accordance with applicable laws and with the procedures of the County, by a vote of \_\_\_\_ Yea and \_\_\_\_ Nay, which meeting was open to the public and at which a quorum was present and acting throughout, and that the original of the foregoing resolution appears of public record in the Minute Book of the County, which is in my custody and control.

GIVEN under my hand and the seal of the County, this \_\_\_\_ day of \_\_\_\_\_ 2018.

(SEAL)

\_\_\_\_\_  
Clerk to Board of Commissioners and Chief  
Executive Officer of DeKalb County