



DeKalb County Government

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

Agenda Item

File ID: 2021-2041

Substitute

1/26/2021

Public Hearing: YES NO

Department: Chief Executive Office

SUBJECT:

Commission District(s): All Commission Districts

Resolution to authorize the execution and delivery of an intergovernmental contract (the “Ponce de Leon Contract”) between DeKalb County and The Fulton-DeKalb Hospital Authority (the “Authority”) related to the renovation of the Grady Health System’s infectious disease program facility (the “IDP Project”), pursuant to which the Authority will agree, among other things, to facilitate the IDP Project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of DeKalb County, and the County will agree, among other things, to make payments to the Authority in an aggregate amount not to exceed \$4,000,000.

Information Contact: Zachary Williams, Chief Operating Officer

Phone Number: 404-371-2174

PURPOSE:

The proposed resolution authorizes the execution, delivery and performance of the Ponce de Leon Contract regarding the renovation of the IDP Project.

NEED/IMPACT:

The Authority and DeKalb County have determined that the renovation of the infectious disease facility located at the Ponce de Leon Center at 341 Ponce de Leon Avenue, Atlanta, Georgia (IDP Project) and the payment of the costs associated therewith will benefit the health and welfare of county residents by providing additional medical services and hospital facilities needed to serve the indigent sick of DeKalb County.

FISCAL IMPACT:

DeKalb County will provide its portion of the public contribution for the IDP Project by agreeing to make payments to the Authority sufficient to enable the Authority to pay an aggregate amount not to exceed \$4,000,000 for a portion of the cost of the IDP Project. The County and the Authority expect that Fulton County will pay \$8 million for its portion of the costs of the IDP Project, and Grady Memorial Hospital Corporation will pay \$12 million its portion of the costs of the IDP Project.

RECOMMENDATION:

(1) To approve the attached resolution; (2) to authorize the execution and delivery of the Ponce de Leon Contract related to the renovation of Grady Health System’s infectious disease program facility (IDP Project) and the payment by the County of an aggregate amount not to exceed \$4,000,000 for the County’s portion of the cost of the IDP Project; and (3) to authorize the Chief Executive Officer to execute all necessary documents and make such changes, insertions or omissions as may be needed to finalize the Ponce de Leon Center Contract.

RESOLUTION OF THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A PONCE DE LEON CONTRACT BETWEEN THE FULTON-DEKALB HOSPITAL AUTHORITY AND DEKALB COUNTY, GEORGIA, REGARDING THE RENOVATION OF THE GRADY HEALTH SYSTEM'S INFECTIOUS DISEASE PROGRAM FACILITY LOCATED AT THE PONCE DE LEON CENTER 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 PONCE DE LEON 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**" and together with the County, 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 the 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 the Contract (hereinafter defined) 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 and the County 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 the County pursuant to the 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 the County desire to enter into an intergovernmental contract known as Ponce de Leon Contract (the "Contract") pursuant to which the Authority will agree, 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 County, and the County will agree, among other things, to make payments to the Authority totaling \$4,000,000 which constitute the County'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 is expected to 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**"); *provided that* as a condition precedent to the execution and delivery of the Contract, the Board of Commissioners of Fulton must authorize the execution and delivery of the Fulton Contract; and

WHEREAS, the Authority and the County 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 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 Authority's right to receive payments from the County 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, prior to the execution and delivery of the Contract by the County, the Corporation must enter into a guaranteed maximum price construction contract with respect to the renovation of the IDP Project in form and substance satisfactory to the County; and

WHEREAS, it is expected that the Authority will adopt a resolution approving its execution, delivery and performance of the Contract in the near future; and

WHEREAS, the 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 execution, delivery and performance by the County of the Contract in substantially the form attached hereto as Exhibit A, is hereby authorized and approved, subject to such changes, insertions or omissions as may be approved by the Chief Executive Officer of the County and subject to the condition that prior to the execution and delivery of the Contract by the County, (1) the Corporation must enter into a guaranteed maximum price construction contract with respect to the

renovation of the IDP Project in form and substance satisfactory to Chief Executive Officer of the County and (2) the Board of Commissioners of Fulton must authorize the execution and delivery of the Fulton Contract. The Chief Executive Officer of the County is hereby authorized to execute and deliver the Contract for and on behalf of the County and the Clerk of the County is hereby authorized to attest to, certify and affix the seal of the County thereupon and that the execution of the Contract by the Chief Executive Officer shall constitute conclusive evidence that such Contract conforms to the provisions of this Resolution;

BE IT FURTHER RESOLVED that as part of the public/private partnership in support of the IDP Project, the Corporation must, prior to the execution and delivery of the Contract, (i) secure from private sources not less than \$12,000,000 for the renovation of the IDP Project, which may take the form of donations, pledges and corporate funds provided by the Corporation, and (ii) permit the County to review all of such commitments and pledges in the offices of the Corporation; it being understood that the identity of all donors and pledgers (other than the Woodruff Foundation and the Corporation) shall be kept confidential; and

BE IT FURTHER RESOLVED that for the purpose of providing funds for payment under the Contract, the County is hereby authorized to and shall 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 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 Contract, as such payments shall become due and payable, and such funds are hereby irrevocably pledged and appropriated to the payment of moneys due under the 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 Contract; and

BE IT FURTHER RESOLVED that all actions heretofore taken by the County relating to the execution, delivery and performance by the County of the Contract are hereby ratified, and the Chief Executive Officer of the County and County Clerk 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 execution, delivery and performance by the County of the Contract and 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

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.

[SIGNATURES ON FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO RESOLUTION AUTHORIZING PONCE DE LEON CONTRACT]

ADOPTED by the Board of Commissioners of DeKalb County, this [redacted] day of [redacted], 2021.

Stephen R. Bradshaw
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this [redacted] day of [redacted], 2021.

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

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

APPROVED AS TO SUBSTANCE:

Zachary L. Williams
Executive Assistant and Chief Operating Officer

APPROVED AS TO FORM:

Viviane H. Ernstes
County Attorney

EXHIBIT A

Ponce de Leon Contract (DeKalb)

CLERK'S CERTIFICATE

I, Barbara H. 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 [REDACTED], 2021] 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 [REDACTED] day of [REDACTED] 2021.

(SEAL)

Clerk, Board of Commissioners of DeKalb
County

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

THIS PONCE DE LEON 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 authorized 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 [REDACTED], 2021], and the execution and delivery of this Contract by DeKalb was authorized by a resolution adopted by its Board of Commissioners adopted on [REDACTED], 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., [REDACTED], 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.

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: