



# DeKalb County Government

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

## Agenda Item

File ID: 2020-0379

Substitute

3/31/2020

Public Hearing: YES  NO

Department: Chief Executive Office

### SUBJECT:

Commission District(s): All Districts.

Resolution to authorize the execution, delivery and performance of a surgery center contract between DeKalb County and the Fulton-DeKalb Hospital Authority (“the Authority”), pursuant to which the Authority will agree to construct, equip and develop a new surgery center (“Surgery Center Contract”) and issue its revenue certificates in a principal amount not to exceed \$35,000,000.

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

Phone Number: 404-371-2174

### PURPOSE:

On October 23, 2018, the Governing Authority approved a resolution for the acquisition, construction and equipping of a new center for advanced surgical services, subject to the condition that the Governing Authority would later approve the Surgery Center Contract and approve the issuance of revenue certificates to finance the project within certain defined parameters.

This resolution approves the execution, delivery and performance of the Surgery Center Contract, subject to the condition that the Authority issue its revenue certificates in an amount not to exceed \$35,000,000.

### NEED/IMPACT:

The Authority and DeKalb 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 facility that includes a multi-story parking garage containing approximately 600 parking spaces and an outpatient surgery center containing approximately 225,000 square feet of space to be located at the former site of the Aldredge Building in Downtown Atlanta (collectively, the “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 Project by agreeing to make payments to the Authority sufficient to enable the Authority to pay principal of and interest on revenue certificates issued by the Authority in a principal amount not to exceed \$35,000,000, that mature not later than December 31, 2048 and bear interest at a rate not to exceed 3.0% per annum, and provide that the maximum annual payments of principal and interest shall not exceed \$4,500,000 (“the Series 2020 Certificates”).

Piper Sandler & Co. will serve as placement agent and will privately place the Series 2020 Certificates through a competitive process.



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## **RECOMMENDATION:**

(1) To approve the attached resolution; (2) to authorize the execution, delivery and performance of the Surgery Center Contract, subject to the condition that the Authority issue the Series 2020 Certificates in the principal amount not to exceed \$35,000,000, maturing not later than December 31, 2048, bearing interest at a rate not to exceed 3.0% per annum and provided that the maximum annual payments of principal and interest shall not exceed \$4,500,000; (3) to authorize the appointment of Piper Sandler & Co. as placement agent for the Series 2020 Certificates; and (4) 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 Surgery Center Contract.

**RESOLUTION OF THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A SURGERY CENTER CONTRACT BETWEEN THE FULTON-DEKALB HOSPITAL AUTHORITY AND DEKALB COUNTY, GEORGIA, REGARDING THE ACQUISITION, CONSTRUCTION, EQUIPPING AND DEVELOPMENT OF A NEW SURGERY CENTER PROJECT AND THE CONTINUED 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 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 the County (the “Board of Commissioners”) 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” (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 DeKalb pursuant to the 2010 U.S. census was 691,893 and the population of Fulton County 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 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 Operating Contract is 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 the acquisition, construction, equipping and development of a new center for advanced surgical services to be housed in an approximately 10-story facility that includes a multi-story parking garage containing approximately 600 parking spaces and an outpatient surgery center containing approximately 225,000 square feet of space to be located at the former site of the Aldredge Building in Downtown Atlanta (collectively, the “Project”) and to pay the costs associated therewith will benefit the health and welfare of the County residents; and

**WHEREAS**, it is estimated that the total cost of the Project will be approximately \$205,000,000 of which approximately \$98,895,000 (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 costs of the Project, it is proposed that the County support the provision of \$32,965,000 (the “DeKalb Net Proceeds”) and that Fulton support the provision of \$65,930,000 (the “Fulton Net Proceeds”); and

**WHEREAS**, in order to provide the DeKalb Net Proceeds, fund capitalized interest, if any, and pay the costs of issuance related to the hereinafter defined Series 2020 Certificates, and secure a portion of the Revenue Certificates in a principal amount not to exceed \$35,000,000 (the “Series 2020 Certificates”), the Authority and the County desire to enter into an intergovernmental contract (the “Surgery Center Contract”), pursuant to which the Authority will agree, among other things, to facilitate the acquisition, construction, equipping 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 the Series 2020 Certificates, subject to the statutory seven mill limit under the Act or such greater limitation as may hereafter be authorized by law; and

**WHEREAS**, Piper Sandler & Co., as placement agent, will privately place the Series 2020 Certificates with one or more “qualified institutional buyers” as defined under Rule 144A

of the Securities Act of 1933, as amended, or institutional “accredited investors” within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended; 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 (the “Fulton Contract”) for the purpose of supporting issuance by the Authority of Revenue Certificates in the principal amount of approximately \$70,000,000 (the “Fulton Certificates”) and the execution and delivery of the Surgery Center Contract by the County will be conditioned on the approval and execution by Fulton of a resolution approving the Fulton Contract which shall be in similar form and substance to this resolution and the Surgery Center Contract; and

**WHEREAS**, the Authority and the County have agreed that the Corporation, combined with private philanthropy and other sources, will finance the balance of the Project as part of a public/private partnership, and the Corporation has raised funds or committed its own funds in the amount of \$106,105,000, which are restricted for use in the acquisition, construction, equipping and development of the Project (the “Private Proceeds”), and the Corporation has agreed to be responsible for any Project cost overruns and will reserve an additional \$25,000,000 on its books for such purpose; and

**WHEREAS**, it is expected that the Authority will adopt a resolution approving its execution, delivery and performance of the Surgery Center Contract and the issuance of the Series 2020 Certificates relating to the Project; 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 amounts sufficient to pay the principal of and interest on the Series 2020 Certificates when due pursuant to the Surgery Center Contract which will have 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 Corporation have entered into an Amended and Restated Development and Funding Agreement, dated as of December 1, 2019 (the “Development Agreement”) which authorizes the construction and development of the Project by the Corporation on behalf of the Authority and specifies 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 as provided in the Development Agreement; and

**WHEREAS**, the Surgery Center 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 Surgery Center 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 the Series 2020 Certificates shall be issued in a principal amount not to exceed \$35,000,000, mature not later than December 31, 2035 and bear interest at a rate not to exceed 3.0% per annum and provide that the maximum annual payments of principal and interest shall not exceed \$4,500,000. The Chief Executive Officer of the County

and the County Attorney are each hereby authorized to execute and deliver the Surgery Center 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 Surgery Center Contract by the Chief Executive Officer or the County Attorney shall constitute conclusive evidence that such Surgery Center Contract conforms to the provisions of this resolution;

**BE IT FURTHER RESOLVED** that as part of the public/private partnership in support of the Project, the Corporation will prior to the issuance of the Series 2020 Certificates (i) secure from Private Proceeds not less than \$106,105,000 for the acquisition, construction, equipping and development of the Project, which may take the form of donations, pledges and corporate funds provided by the Corporation (including \$7.5 million which has already been applied to pay for the Project site), (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 (iii) reserve on its books for the purpose of paying for Project cost overruns a total of \$25,000,000 in cash and cash equivalents; and

**BE IT FURTHER RESOLVED** that for the purpose of providing funds for payment under the Surgery Center 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 the principal of and interest on the Series 2020 Certificates when due pursuant to the Surgery Center 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 Surgery Center 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 Contract; and

**BE IT FURTHER RESOLVED**, that the County's participation in the acquisition, construction, equipping and development of the Project is subject to and dependent upon the execution of the Fulton 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 Surgery Center Contract are hereby ratified, and the Chief Executive Officer of the County, the County Attorney 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 (including but not limited to a certificate purchase agreement, preliminary or final official statement or other offering document and continuing disclosure agreement, if applicable), which any of such persons may deem necessary or desirable in order to effectuate the execution, delivery and performance by the County of the Surgery Center Contract and the Series 2020 Certificates and the actions contemplated by this resolution and the execution and delivery of any such contracts, instruments or other documents (including but not limited to a certificate purchase agreement, preliminary or final official statement or other offering document and continuing disclosure agreement, if applicable) 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 the issuance of the Series 2020 Certificates by the Authority is hereby approved; and

**BE IT FURTHER RESOLVED** that the appointment of Piper Sandler & Co. as the placement agent for the Series 2020 Certificates is hereby approved; 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]

**SO PASSED AND ADOPTED**, this \_\_\_\_ day of \_\_\_\_\_, 2020.

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STEVE BRADSHAW  
Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_\_ day of \_\_\_\_\_, 2020.

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MICHAEL THURMOND  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

APPROVED AS TO FORM:

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BARBARA SANDERS-NORWOOD  
Clerk

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VIVIANE ERNSTES  
County Attorney  
DeKalb County

EXHIBIT "A"

**Surgery Center Contract (DeKalb)**

**CLERK’S CERTIFICATE**

**STATE OF GEORGIA,**

**DEKALB COUNTY**

I, Barbara Sanders-Norwood, Clerk of the Board of Commissioners and the Chief Executive Officer of DeKalb County, do hereby certify that the foregoing pages constitute a true and correct copy of the resolution adopted by the Board of Commissioners of DeKalb County at an open public meeting duly called and lawfully assembled at \_\_ .m., on the \_\_\_ day of \_\_\_\_\_, 2020, the original of said resolution being duly recorded in the Minute Book of the Board of Commissioners, which Minute Book is in my custody and control. I do hereby further certify that the following members of the Board of Commissioners were present at said meeting:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

and that the following members were absent:

\_\_\_\_\_  
\_\_\_\_\_

and that said resolution was duly adopted by vote of:

yes \_\_\_\_\_ no \_\_\_\_\_

**WITNESS** my hand and the official seal of DeKalb County, Georgia, this the \_\_\_ day of \_\_\_\_\_, 2020.

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

**SURGERY CENTER CONTRACT  
(DEKALB)**

**THIS SURGERY CENTER CONTRACT** (as amended and supplemented, this “Contract”) is made and entered into \_\_\_\_\_, 2020, 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” (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**, 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 (the “Lease Agreement”), 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 an expansion of the Grady Health System should be accomplished through the Authority's issuance of one or more series or issues of tax-exempt or taxable revenues certificates (the "Revenue Certificates"), the proceeds of which will be applied to the acquisition, construction, equipping and development of a new center for advanced surgical services to be housed in an approximately 10-story facility that includes a multi-story parking garage containing approximately 600 parking spaces and an outpatient surgery center containing approximately 225,000 square feet of space to be located at the former site of the Aldredge Building in Downtown Atlanta (collectively, the "Project") and to pay the costs associated therewith, on the terms and conditions set forth in a certificate resolution adopted by the Authority on \_\_\_\_\_, 2020 (the "Certificate Resolution"); and

**WHEREAS**, in connection with the issuance of the Series 2020B Certificates, the Authority has approved the execution and delivery of (i) a Project Fund Custodian Agreement (the "Project Fund Custodian Agreement") among the Authority, the Corporation and U.S. Bank National Association, as the Project Fund Custodian (the "Project Fund Custodian"), and (ii) one or more agreements (collectively referred to herein as the "Paying Agent Agreement") between the Authority and U.S. Bank National Association, in its capacity as the paying agent, registrar and custodian under the Certificate Resolution (in such capacities referred to herein as the "Paying Agent"); and

**WHEREAS**, in order to secure a portion of the Revenue Certificates in a principal amount of [\$\_\_\_\_,000,000] (the "Series 2020B Certificates"), the Authority and DeKalb desire to enter into this Contract pursuant to which the Authority agrees, among other things, to facilitate the acquisition, construction, equipping and development of the 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 sufficient to enable the Authority to pay the principal of, premium (if any) and interest on the Series 2020B Certificates, the net proceeds of \$32,965,000 after payment of issuance costs and capitalized interest will constitute the DeKalb portion of the public contribution for the Project (the "DeKalb Proceeds"); and

**WHEREAS**, in order to provide additional public funds to pay the costs of the Project, the Authority shall issue additional Revenue Certificates in a principal amount of [\$\_\_\_\_,000,000] which, after payment of issuance costs and capitalized interest are to provide net proceeds of \$65,930,000 (the "Fulton Proceeds") constituting the Fulton portion of the public contribution for the Project and which shall be secured by a contract between Fulton and the Authority in similar form and substance to this Contract (the "Fulton Contract") it being understood that the [authorization][execution and delivery] of such Fulton Contract is a condition to the issuance of the Series 2020B Certificates by the Authority; and

**WHEREAS**, the Authority and DeKalb have agreed that the Corporation, combined with private philanthropy and other sources, will finance the balance of the Project as part of a

public/private partnership and the Corporation has raised and will collect funds in the amount of \$106,105,000, which are restricted for use in the acquisition, construction, equipping and development of the Total Project (the “Private Proceeds”), and which will include the Corporation’s commitment to provide its own funds to be used for Project costs, and the Corporation has agreed to be responsible for any Project cost overruns and will reserve \$25,000,000 on its books for such purpose; and

**WHEREAS**, the Authority and the Corporation have entered into an Amended and Restated Development and Funding Agreement, dated as of December 1, 2019 (collectively, the “Development Agreement”), which authorizes the acquisition, construction, equipping and development of the Project by the Corporation on behalf of the Authority and specifies the use and distribution of the Fulton Proceeds and the DeKalb Proceeds (collectively, the “Public Proceeds”) and the Private Proceeds for payment of Project costs on a pro rata basis as provided in the Development Agreement; and

**WHEREAS**, the execution and delivery of this Contract by the Authority was authorized by the Authority pursuant to the Certificate Resolution, and the execution and delivery of this Contract by DeKalb was authorized by a resolution of its Board of Commissioners adopted on \_\_\_\_\_, 2020; and

**WHEREAS**, pursuant to the Certificate Resolution, provision is made whereby under certain terms and conditions, including the consent of DeKalb as provided in this Contract, additional certificates or other obligations may be issued by the Authority ranking on a parity as to lien on the Contract Revenues (as therein defined) with the lien securing the Series 2020B Certificates (the “Additional Certificates”); 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 Project and has entered into a guaranteed maximum price construction contract and such Certificate of Need and guaranteed maximum price construction contract with respect to the construction of the Project; and

**WHEREAS**, the Authority, pursuant to the Certificate Resolution, pledged this Contract and the Contract Revenues to the payment of the Series 2020B Certificates and any Additional Certificates hereafter issued (with the consent of DeKalb as provided in this Contract) pursuant to the terms of the Certificate Resolution (collectively, the “Certificates”); and

**WHEREAS**, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Certificate Resolution; 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 the issuance and delivery of the Series 2020B Certificates and shall continue until midnight on [\_\_\_\_\_, 2048] or until such time as the Certificates as to principal, interest and redemption premium, if any, have been paid or provision duly made therefor in accordance with the Certificate Resolution, but in no event shall the term of this Contract exceed forty (40) years.

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) Simultaneously with the issuance and delivery of the Series 2020B Certificates, the proceeds derived from the sale of the Series 2020B Certificates shall be delivered or caused to be delivered by the Authority as follows:

(i) \$32,965,000 to U.S. Bank, National Association, serving as Project Fund Custodian under the Project Fund Custodian Agreement for deposit into the DeKalb Project Cost Account in the Project Fund created under the Project Fund Custodian Agreement for the construction and development of the Project;

(ii) \$\_\_\_\_\_ to U.S. Bank, National Association, serving as Paying Agent under the Paying Agent Agreement for deposit into the Costs of Issuance Fund created under the Certificate Resolution for the payment of the costs incurred in connection with the issuance of the Series 2020B Certificates; and

[(iii) \$\_\_\_\_\_ to the Paying Agent for deposit into the Capitalized Interest Account created under the Certificate Resolution;]

(b) The Authority will provide updates to DeKalb, as requested, regarding the construction budget, timeline of construction, utilization of the DeKalb Proceeds and contractor/subcontractor information as provided by the Corporation in the development of the Project.

(c) Prior to and as a condition of the issuance and delivery of the Series 2020B Certificates, the Corporation will deposit at least \$15,000,000 into the Private Project Cost Account (as defined in the Development Agreement) and will have at least \$50,000,000 deposited at the Community Foundation for Greater Atlanta and restricted for the development of the Project. The Corporation has committed to obtain a total of \$106,105,000 in the form of cash, commitments or pledges from third parties or from its own funds, of which \$7.5 million has already been applied to pay for the Project site. In addition, the Corporation will also have at least \$25,000,000 in cash or cash equivalents

reserved on its books and restricted for use for the Project in the event of any cost overruns.

(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 deposited with the Paying Agent and used and applied in the order of priority set forth in [Section 602] of the Certificate Resolution to the payment of the principal of and the interest on the Series 2020B Certificates as same become due and payable on each Interest and Principal Payment Date.

(h) The Authority shall not issue any certificates, including Additional Certificates (other than the Series 2020B Certificates the issuance of which, by execution and delivery of this Contract and the Certificate Resolution, have been approved) or incur any other obligation payable from or having a lien on the revenues of the Authority derived under this Contract, unless prior thereto the Authority and DeKalb shall have entered into an amendment or supplement to this Contract, or a new contract, under the terms of which DeKalb is obligated to pay to the Authority amounts sufficient to enable the Authority to pay debt service on all Certificates Outstanding, including the revenue certificates proposed to be issued, and to pay such other obligations proposed to be incurred.

(i) The Authority shall not cause an unconditional notice of optional redemption of the Series 2020B Certificates to be sent to the owners thereof unless the Authority has on hand or has made provision, from refunding certificates or otherwise, for amounts sufficient to redeem the Series 2020B Certificates to be optionally redeemed to be on deposit with the Paying Agent on or prior to the redemption date.

(j) 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.

(k) 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) When the Series 2020B Certificates are issued and outstanding:

(i) DeKalb hereby covenants and agrees to pay to the Paying Agent for the benefit of the Authority for deposit in the debt service account for the Series 2020B Certificates on or before the twentieth (20th) day of each month next preceding each Interest Payment Date (as defined in the Certificate Resolution), the amount which will be sufficient (taking into account moneys on deposit in the Capitalized Interest Account) to pay as follows: (i) an amount equal to the interest which has accrued and will accrue since the last Interest Payment Date for the Series 2020B Certificates to which interest has been paid, or from the initial date of such Series 2020B Certificates, if no interest has been paid, to and including the last day of such month, plus (ii) an amount equal to the Principal Installment coming due on the

next Principal Payment Date for the Series 2020B Certificates, less (iii) so long as DeKalb is not past due in any payment required to be made hereunder, any amounts actually on deposit in the applicable debt service account for the Series 2020B Certificates (other than payments made by DeKalb under subparagraphs (i) and (ii) of this Section 4(a)) at the time any payment is to be made hereunder but excluding moneys held in any debt service account for payment of Series 2020B Certificates which have matured but which have not been presented for payment.

(ii) DeKalb shall pay to the Authority or to the Custodian, any other amounts due and payable under the Series 2020B Certificates including but not limited to any redemption premium or required rebate payment.

(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. The Subordinate Obligations shall not include those under any contract entered into by DeKalb pursuant to Section 4(g) hereof for the purpose of paying or securing debt service on any additional certificates or obligations issued by the Authority.

(c) The amounts payable under this Section 4 shall be used by the Authority only to provide for the payment of the principal of and the interest on the Series 2020B Certificates as same become due and payable, on each Interest Payment Date and Principal Payment Date (as such terms are defined in the 2020 Certificate Resolution), as applicable. The payments described in subparagraph (a) shall be made directly to the Paying Agent for the account of the Authority so as to assure the availability of moneys at all times to pay in full the Series 2020B Certificates as same become due and payable, on each Interest Payment Date and Principal Payment Date and shall be kept separate from and not commingled with any payments made by Fulton in connection with any other outstanding obligations. The obligation of DeKalb to make the payments required under this Section 4 is for the benefit of the owners of the Series 2020B Certificates and shall be absolute and unconditional and continue unabated until such time as the principal of, premium, if any, and interest on the Series 2020B Certificates shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Certificate Resolution; 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 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 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, the Development Agreement, the Certificate Resolution, the Project Fund Custodian Agreement, the Paying Agent Agreement 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 for the Authority to meet its debt service requirements on the Series 2020B Certificates, to assure the payments therefor 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 current sinking fund year, (ii) amounts previously paid, if any, in the then current sinking fund 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), unless, prior to making the proposed payment, DeKalb shall have prepaid to the Paying Agent all amounts to be payable under subparagraph (a) of this Section 4 in the then current sinking fund year.

(g) DeKalb shall not be obligated under the provisions of this Section 4 to pay from the tax revenues described in Section 4(d) hereof (the “Permitted Tax Revenues”) debt service on any Additional Certificates (as defined in the Certificate Resolution) unless (i) the Authority and DeKalb shall have entered into an amendment or supplement to this Contract, or a new contract, and such amendment or supplement to this Contract or such new Contract is permitted under the terms of the Certificate Resolution and (ii) the Permitted Tax Revenues, based on the latest taxable digest of property located in Fulton subject to taxation for purposes of the Act, shall be sufficient to enable the Authority to pay (A) the highest Debt Service Requirements for any succeeding Bond Year on the Outstanding Certificates (as those terms are defined in the 2020 Certificate Resolution) and on the Additional Certificates proposed to be issued, plus (B) the annual amounts then due and payable by DeKalb under the Subordinate Obligations.

(h) DeKalb agrees that not later than each [August 31<sup>st</sup>] following the close of each fiscal year, commencing with the fiscal year ended [December 31, 2020], it will file with \_\_\_\_\_, as the initial purchaser of the Series 2020B Certificates (the “Purchaser”), a copy of DeKalb’s audited financial statements for such fiscal year. DeKalb agrees to furnish such additional financial information relating to DeKalb as may be reasonably requested in writing by the Authority, the Purchaser or their respective designees. DeKalb agrees to provide such items in an electronic format acceptable to the Purchaser.

(i) Reserved.

(j) DeKalb hereby covenants and agrees it will pay any Redemption Premium (as defined in the Certificate Resolution) upon any redemption (other than a mandatory redemption pursuant to regularly scheduled Sinking Fund Payments as defined in the Certificate Resolution) prior to maturity of the Series 2020B Certificates. DeKalb hereby covenants and agrees that it will pay the reasonable fees and expenses of the Fiduciaries (as defined in the Certificate Resolution).

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

(a) Subject to the provisions of subparagraph 3(g) and subparagraph 4(g), as a part of the undertaking contemplated herein, the Authority is under an obligation to meet the principal and interest requirements of the Series 2020B Certificates as same become due and payable on each Interest Payment Date and Principal Payment Date (as such terms are defined in the Certificate Resolution) from the amounts paid by DeKalb under this Contract, and the revenues to be derived under this Contract shall be irrevocably pledged to the payment of the principal of and interest on the Series 2020B Certificates to the extent and in the manner to be provided in the Certificate Resolution, to all of which each party does hereby consent; provided, however, should at some later date or dates it be determined advisable to issue additional revenue certificates or obligations by the Authority ranking as to lien on the revenues of the Authority derived hereunder *pari passu* with the Series 2020B Certificates, and a new contract or supplemental agreement to this Contract be entered into by and between the parties hereto to that effect, then the lien herein created on said revenues as security for the payment of the Series 2020B Certificates may be extended and broadened to include the payment of any such certificates or obligations and the principal of and interest thereon.

(b) 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.

(c) The term “sinking fund year” shall mean the period commencing on the 2nd day of January in each year and extending through the 1st day of January in the next year.

(d) While this Contract is between the parties hereto, it is acknowledged that the owners of the Series 2020B Certificates have an interest herein and shall be third party beneficiaries of this Contract entitled to enforce the provisions hereof as if they were a party hereto. The parties hereto covenant that this Contract cannot be modified or amended, except as provided in the Certificate Resolution.

(e) 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. No recourse shall be had for the payment of the Series 2020B Certificates or any claim thereon against any member, director, officer, agent, attorney or employee of the Authority or DeKalb, past, present or future.

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

(g) 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.

(h) 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.

(i) 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
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with copy to: Arnall Golden Gregory LLP  
171 17<sup>th</sup> 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, 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
Attention: Dianne McNabb, Chief Financial  
Officer  
(404) 371-2745

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

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

(k) 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)

**THE FULTON-DEKALB HOSPITAL  
AUTHORITY**

By: \_\_\_\_\_  
SHARON BENT-HARLEY, M.D.  
Chair

Attest:

\_\_\_\_\_  
DR. ROMEO STOCKETT  
Secretary

[SEAL]