

AGREEMENT FOR RIVER/LAKE INFORMATION MANAGEMENT
SERVICES

THIS AGREEMENT, entered into as of _____, 2022, by and among the ATLANTA REGIONAL COMMISSION (hereinafter referred to as “ARC”) and the CITY OF ATLANTA (hereinafter referred to as “Atlanta”); THE ATLANTA – FULTON COUNTY WATER RESOURCES COMMISSION, a joint venture of the City of Atlanta and Fulton County (hereinafter referred to as “AFCWRC”); COBB COUNTY-MARIETTA WATER AUTHORITY (hereinafter referred to as “CCMWA”); and DEKALB COUNTY (hereinafter referred to as “DeKalb”). (Atlanta, AFCWRC, CCMWA, and DeKalb are sometimes hereinafter referred to as the “Participants” or “Local Governments”).

W I T N E S S E T H:

WHEREAS, the Participants are all “participating affected local governments” within the meaning given that phrase in § 50-8-99.1(a) of the Official Code of Georgia Annotated (the “Code”); and

WHEREAS, each of the Participants satisfies all or portion of its water needs by withdrawing same from the Chattahoochee River; and

WHEREAS, the Participants desire to provide for the efficient use of the water resources for water supply and water quality, and to assure the continued availability of the foregoing water resources by providing information for appropriate releases of water from Lake Lanier by the United States of America (the “Government”) and from Morgan Falls Dam by Georgia Power Company (the “Company”); and

WHEREAS, pursuant to § 50-8-99.1(b) of the Code, ARC is authorized to act as the contracting and coordinating agent for the Participants under certain conditions; and

WHEREAS, each of the Participants hereby agrees, approves and authorizes ARC to act as its agent as aforesaid, subject to the authority given and duties defined herein below, including providing to the Company and the Government information on needs for water supply withdrawals from the Chattahoochee River below Buford Dam to its confluence with Peachtree Creek, and coordinating with the Participants to ensure the efficient management of the water resources in Lake Lanier and the Chattahoochee River below Buford Dam to its confluence with Peachtree Creek (collectively, the “project”); and

WHEREAS, ARC has negotiated and executed on February 12, 2007 a Statement of Policy with the Company (the “Statement”) whereby the Company agrees to use its best efforts, subject to the conditions in the Statement, to operate Morgan Falls Dam in such a fashion as to provide minimum releases determined by ARC as sufficient for the water supply withdrawals and to meet minimum target river flows immediately upstream from the confluence of the Chattahoochee River with Peachtree Creek; and

WHEREAS, the Statement was incorporated into the FERC Order Issuing New License for Morgan Falls Dam dated May 22, 2008, and by their terms both the FERC License and Statement expire together in 2039; and

WHEREAS, an updated Water Control Manual for Buford Dam and Lake Sidney Lanier was approved on March 30, 2017 (“Water Control Manual”), and among other things it requires the Government to make releases from Buford Dam, accounting for inflows and withdrawals, to provide a minimum target of 750 cfs between May to October and 650 cfs between November to April, measured 40 miles downstream from Buford Dam in the Chattahoochee River, just upstream of the confluence with Peachtree Creek (with the 650 cfs or 750 cfs, as applicable, being referred to as the “Minimum Flow Target”).

WHEREAS, the Participants and ARC desire to enter into this agreement in order to allocate the costs and benefits associated with the project, establish obligations and responsibilities of each of the Participants, delineate the relationship among the parties hereto, and address any other matters which may be necessary or convenient in order to assure the successful implementation of the project, all pursuant to § 50-8-99.1(c) of the Code.

NOW, THEREFORE, for and in consideration of the premises and the other mutual benefits to be derived herefrom, each of the parties hereto does hereby agree as follows:

1. Authority of ARC; Acknowledgements. In accordance with § 50-8-99.1(c) of the Code, each of the Participants hereby grants to ARC the authority to act as the sponsor and coordinator of the project, including interacting with the Government and the Company, and implementing the Statement. By so authorizing ARC to act on its behalf, each Participant agrees to be bound by each and every applicable provision of the Statement, whether or not a Participant is a party thereto. Each of the Participants hereby specifically ratifies any and all actions taken by ARC on its behalf with respect to the Statement which may have actually occurred prior to this agreement. Each Participant acknowledges that it will be acting in concert with the other Participants with regard to the project and agrees to cooperate with ARC and the other Participants in connection with same.

Each Participant recognizes that this agreement provides only for an information management and accounting system. ARC makes no representation with respect to the quality or availability of water. The water level along the Chattahoochee River will be determined in part by river geometry which will not be preserved or controlled by the Government, the Company or ARC. Thus, this agreement shall not be construed as giving any Participant the right to have the water level maintained at any elevation at points along the Chattahoochee River.

Each of the parties hereto recognizes that the information management and accounting system contemplated by this agreement is an administrative arrangement for coordinating and providing information used by the Government and the Company to make water control decisions in their efforts to make releases sufficient to meet the water supply needs of the Participants and the Minimum Flow Target. The purpose of the project is to provide an information management and accounting system for the most efficient water management practicable for providing for water supply withdrawals from the Chattahoochee River. It is a goal

of the information management and accounting system to request releases from Buford Dam only when needed and to schedule releases during peak power demand periods whenever possible, and to allow the Company to operate Morgan Falls Dam effectively in providing water supply and water quality flow downstream from the reservoir. Each Participant recognizes that participation in this agreement is being undertaken to fulfill a condition of its state water withdrawal permits.

2. Duties of ARC. ARC shall act as the sponsor for this project pursuant to § 50-8-99.1(c) of the Code. ARC agrees to perform in a timely and professional manner those tasks to be performed by ARC in accordance with this agreement and the Statement, to work with the Government and the Company in furtherance of the goals and objectives of the project, and to coordinate the implementation of the project as planned on behalf of the Participants in accordance with the terms hereof. More specifically, the activities of ARC in connection with the project shall include, but not necessarily be limited to, the following:

(a) Interfacing, communicating and working with the Government and the Company as may be necessary or proper in order to achieve the efficient management of the water resources;

(b) Representing the interests of the Participants while carrying out the terms and conditions of this agreement and in dealing with the Government and the Company generally;

(c) Coordinating the activities of the Participants in connection with the project;

(d) Calling and chairing such meetings of the Participants and/or representatives of the Government, the Company and any other parties responsible for the implementation of the project as may be necessary or desirable from time to time;

(e) Coordinating the implementation of a river and lake information management and accounting system in cooperation with the Participants, the Company, the Georgia Department of Natural Resources Environmental Protection Division and the Government. More specifically, ARC shall at a minimum:

(i) receive in advance estimated water requirements for each day of the following week and actual withdrawals for each day of the previous week from all the Participants;

(ii) monitor tributary stream flows on a daily or other appropriate basis through data made available from the Government and the USGS, and estimate inflows;

(iii) advise the Government and the Company of weekly water requirements;

(iv) coordinate future improvements to the information management and accounting system; and

(f) Collecting the payments due from each of the Participants hereunder in connection with the project; and

(g) Maintaining any records related to the project as may be reasonably required by the Government.

Notwithstanding the above, it is understood and agreed that ARC's performance hereunder is, in many respects, conditioned upon the cooperation of other parties, particularly the Government, the Company and the Participants. Consequently, ARC assumes no responsibility for its failure to perform as contemplated herein, or under any agreement, when such failure is caused by the fault of others, the occurrence or nonoccurrence of any of the conditions in Section 1.6 of the Statement, any failure by the Government to make necessary releases from Buford Dam, or any failure by the Company to make necessary releases from Morgan Falls Dam.

3. Duties of the Participants. The Participants shall perform such duties and shall have the responsibilities including, but not necessarily limited to, the following;

(a) Taking such actions as may be reasonably required in connection with the project;

(b) Attending any meetings called by ARC in connection with the project after receiving reasonable prior notice;

(c) Cooperating with ARC in the effort to provide an information management and accounting system by:

(i) Designating in writing to ARC a contact person responsible for providing the weekly estimates called for in item (c)(ii) below;

(ii) Providing to ARC on a weekly basis an estimate of anticipated daily water withdrawals each day for the upcoming week; including an estimate to be received at ARC by 3:00 p.m. on Wednesday of each week and to include the period beginning on the following Saturday and continuing through the Friday thereafter, as well as an update of the water demand forecast for Tuesday through Friday provided on the Monday of each week by 12:00 noon; and providing ARC each day with the previous day's actual daily withdrawal figures, all of which information shall be provided by email or telephone and promptly confirmed in writing directed to a contact person designated by ARC.

(iii) Providing for the accurate measurement of raw water withdrawals, including metering if necessary, and providing information to ARC regarding the method used to measure raw water withdrawals and estimating future weekly water withdrawals, and cooperating with ARC to improve forecasting methods;

(iv) Maintaining and making available to ARC up-to-date and accurate monthly records of the quantity of water withdrawals and estimates in a form reasonably acceptable to ARC; and

(v) Using their best efforts to request no more water than is necessary for daily operations, understanding that requesting more water than necessary may result in unneeded releases from Buford Dam and Morgan Falls Dam and the corresponding lowering of water levels in Lake Lanier; and

(vi) Using their best efforts to withdraw no more water than has been estimated; and

(vii) If water withdrawals will exceed the estimates provided to ARC, provide prompt notice to ARC sufficiently in advance of any additional withdrawals to allow appropriate action to be taken (i.e. if the estimate given on Wednesday will be exceeded, ARC will be promptly notified no less than 24 hours in advance of the anticipated need so that, if possible, appropriate action can be taken);

(d) Withdrawing water only in accordance with the terms hereof and the requirements of each Participant's State of Georgia Water Withdrawal Permit;

(e) Maintaining any records related to the project as may be reasonably required by either ARC or the Government; and

(f) Paying their allocable shares of the costs associated with the project in a timely manner.

4. Compensation. For and in consideration of the project management services to be provided by ARC hereunder, each Participant agrees to pay to ARC the sum of:

\$27,900 for calendar year 2023
\$29,000 for calendar year 2024,
\$30,150 for calendar year 2025,

As part of the River/Lake Management System, the United States Geological Survey (USGS) operates and maintains certain gages in Suwanee Creek near Suwanee, Georgia and in Sope Creek, near Marietta, Georgia. The Participants agree to pay for necessary field and office work by USGS, directly related to such gage operation and maintenance. For this work to be performed by USGS, each Participant agrees to reimburse ARC up to the following amounts based on the actual amounts billed by USGS:

\$7,700 for calendar year 2023
\$7,850 for calendar year 2024
\$7,850 for calendar year 2025

5. Indemnification of ARC. The Participants recognize that ARC has assumed the role of project sponsor at the request of the Participants. To the extent allowed by law, each Participant agrees to indemnify ARC and hold ARC harmless from liability of any nature or kind for or on

account of any claim for damages which may be filed or asserted by any party as a result of the activities undertaken by ARC as project sponsor and agent of the Participants in connection with the project, so long as such activities are performed by ARC in good faith and without willful neglect.

6. Term. This agreement shall be effective as of January 1, 2023 (“Effective Date”) and shall continue in full force and effect until December 31, 2025; provided, however, that should performance of this agreement or the project become impossible due to factors outside the control of any of the parties, then this agreement shall be subject to immediate termination upon written notice from ARC or any one of the Participants to each of the other parties to this agreement.

7. Successors. This agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto, its successors and permitted assigns.

8. Entire Agreement; Amendments. This agreement incorporates all prior negotiations, interpretations, and understandings between the parties and is the full and complete expression of their agreement. Any change, alteration, deletion or addition to the terms set forth in this agreement shall be valid only if accomplished by written amendment executed by all parties hereto.

9. Applicable Law. This agreement has been executed and will be performed in the state of Georgia, and all questions of interpretation and construction shall be governed by the laws of such state. Unless expressly provided otherwise by statutory law, venue of any action brought under this agreement shall be in Fulton County, Georgia exclusively.

10. Legal Authority. Each party to this agreement represents to each of the other parties that it is duly authorized and legally empowered to enter into this agreement.

11. Failure to Act. Should any party hereto at any time fail to take any action or make any response required hereunder in a timely manner, then the other parties shall be entitled to act alone with regard to any such matter; provided, however, that the failure of a party so to act or respond shall not affect that party’s right to act or respond as to future matters.

12. Severability. If any provision of this agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this agreement shall be valid and shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by and through there duly authorized representatives as of the day and year first above written. This agreement may be executed in counterparts by each party hereto and shall be effective as of the Effective Date.

Counterpart 1 of 5 to Agreement for River/Lake Management Services.

ATLANTA REGIONAL COMMISSION

Attest: _____

Anna Roach, Executive Director

Kerry Armstrong, Chair

Counterpart 2 of 5 to Agreement for River/Lake Management Services.

Attest:

CITY OF ATLANTA

Municipal Clerk

Andre Dickens, Mayor

(Seal)

Approved as to Form:

City Attorney

Counterpart 3 of 5 to Agreement for River/Lake Management Services.

COBB COUNTY-MARIETTA WATER
AUTHORITY

James C. Scott, Jr., Chairman

Approved as to form:

Attest:

Attorney

Title:

Counterpart 4 of 5 to Agreement for River/Lake Management Services.

DEKALB COUNTY, GEORGIA

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

Attest:

Barbara Sanders
Clerk of the
Chief Executive Officer
And Board of Commissioners
Of DeKalb County, Georgia

Approved as to Substance:

Approved as to Form:

David Hayes
Director of Watershed Management
DeKalb County, GA

County Attorney

Counterpart 5 of 5 to Agreement for River/Lake Management Services.

ATLANTA-FULTON COUNTY WATER
RESOURCES COMMISSION

AFCWRC Chair

Approved as to Content:

Kathy Crews, General Manager

Approved as to Form:

AFCWRC (Fulton County)

Approved as to Form:

AFCWRC (City of Atlanta)

Acknowledged by:
Fulton County

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

Clerk of the Commission

Approved as to Form:

Deputy County Attorney