

Public Hearing: YES NO

Department: Watershed Management

SUBJECT:

Commission District(s): 5 & 7

Agreement for the Construction and Financing of Sewer Upgrades with the Company with a contribution of \$682,000.00.

Information Contact: Reginald D. Wells, Director

Phone Number: 770-414-6240

PURPOSE:

To consider approving an agreement for the Construction and Financing of Sewer Upgrades in the Snapfinger modelshed with Westbury Family I, LP.

NEED/IMPACT:

Westbury Family I, LP seeks to build the Westbury Mixed Use development with 210 housing units and 5,765 square feet of retail space at 3952 Covington Highway, Decatur, GA 30032, (the “Project”) and the Project requires upgrading portions of the existing sanitary sewer infrastructure to accommodate the additional discharge of wastewater into the Sewer System. The purpose of this Agreement is for the parties to enter a binding contract evidencing their agreement as to the installation and financing of the improvements for this development. This development will enhance its surrounding community as per Section 3 of the County policy for allocating wastewater credits. The improvements will consist of upgrades of certain portions of the DeKalb County sanitary sewer infrastructure servicing the Snapfinger modelshed. The County, through its Department of Watershed Management and/or its contractor, will determine those portions of the sanitary sewer infrastructure to be upgraded (the “Work”). The improvements will be completed by September 1, 2027. Completed improvements shall generate 96,966 gallons per day in sewer capacity credits as calculated per DeKalb County’s Capacity Assurance Banking Credit Program. Company agrees that upon completion of the improvements and before Company shall be allowed access to the County’s sanitary sewer system, Company shall reimburse the County the total estimated cost of \$682,000.00 for sewer improvements in the Snapfinger modelshed. (“Company’s Contribution”).

FISCAL IMPACT: The County's contribution is \$213,000.00.

RECOMMENDATION:

To authorize the CEO or designee to execute the Agreement and all necessary documents in a form acceptable to the County Attorney.

**AGREEMENT FOR
CONSTRUCTION AND FINANCING
OF SEWER UPGRADES**

THIS Agreement for the Construction and Financing of Sewer Upgrades (hereinafter referred to as “**Agreement**”) is made as of the _____ day of _____, 20____ by and between DeKalb County, Georgia (hereinafter referred to as “**County**”) and Westbury Family I, LP, with its principal place of business located at 3715 Northside Parkway NW Building 200, Suite 175, Atlanta, GA, 30327 (hereinafter referred to, together with any entity to which it may assign its rights under this Agreement, as the “**Company**”).

WITNESSETH:

WHEREAS, the Company is undertaking the construction of building the Westbury Mixed Use development with 210 housing units and 5,765 square feet of retail space located at 3952 Covington Highway, Decatur, GA 30032 (the “**Project**”); and

WHEREAS, the Project will increase demand on the existing sanitary sewer infrastructure serving the Project site; and

WHEREAS, the Project will require upgrading portions of the existing sanitary sewer infrastructure to accommodate additional discharge of water into the Sewer System (the “**Improvements**”); and

WHEREAS, the County has previously adopted Section 25-177 of the Code of DeKalb County, as revised 1988 (hereinafter “**Code**”), outlining a method of cost sharing between the County and a private developer when a proposed development would require expansion of the existing sanitary sewer system; and,

WHEREAS, due to the complex nature of the Improvements contemplated by this Agreement and the extent of the improvements and expansion of the sanitary sewer system beyond

just Company's use, the County's Department of Watershed Management or its contractors has agreed to complete the Improvements and Company has agreed to make a contribution towards the Improvements in an amount of \$682,000.00 as the appropriate method of cost sharing; and

WHEREAS, the Company has represented to the County that the Project qualifies as a Community Enhancement Project, a designation that affects both the calculation of required capacity credits and the Company's financial obligations towards the Improvements described in this Agreement; and

WHEREAS, the purpose of this Agreement is for the parties to enter into a binding contract evidencing their agreement as to the installation and financing of the Improvements;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises and undertakings contained herein, the parties hereto to hereby agree and consent to the following:

1. **Improvements**. The Improvements will consist of upgrades of certain portions of the DeKalb County sanitary sewer infrastructure and lines servicing 3952 Covington Highway, Decatur, GA 30032 (the "Site"). The County, through its Department of Watershed Management and/or its contractor, will determine those portions of the sanitary sewer infrastructure to be upgraded (the "Work") from the candidate areas of sewer infrastructure in need of upgrade in the Snapfinger modelshed. The Work shall be completed to the extent necessary to generate 96,966 gallons per day in sewer capacity credits as calculated per DeKalb County's Capacity Assurance Banking Credit Program. The County's Department of Watershed Management, or other applicable department, shall operate and maintain the Improvements in accordance with applicable laws.
2. **Term of Agreement and Relevant Times**
 - a. Prior to executing the Agreement, the Company is required to register with DeKalb County's vendor management system. This registration is required to allow for routing and execution of the Agreement.

- b. This Agreement shall become effective upon the date of execution, and terminate on September 1, 2028, unless terminated earlier in accordance with the termination provision of this Agreement or extended by and through consent of the parties.
- c. The County agrees to have the Improvements required by Section 1 of this Agreement designed, constructed and operational no later than September 1, 2027.
- d. Upon satisfaction of the terms of this agreement, the County's approval of Company's request for sewer capacity will expire two (2) years from the date listed on the County's correspondence entitled "SEWER CAPACITY APPROVAL IN LIEU OF CERTIFICATION," (the "expiration date"). At that time, a new request for capacity must be submitted to the County for review and approval. Extensions of up to two (2) years will be considered if made in writing more than sixty (60) days prior to the expiration date.
- e. Any sewer credits created are non-transferable by the Company, unless the proposed transfer is to a successor, affiliate or assignee of the Company. A successor, affiliate or assignee of the Company may only use any such transferred sewer capacity credits for the portion of the Site in which it has an ownership interest. In no event may the sewer capacity credits be used for any project or location other than the Site. Any sewer capacity credits created as a result of the Improvements that are in excess of those required by the Company, or a successor, affiliate or assignee of Company, as reflected in this Agreement and in accordance with DeKalb County's policies, shall remain in the control of the County. The Company, may transfer credits in whole or in part to its successors, affiliates or assignees.

3. Reimbursement of a Portion of Improvement Costs by Company

- a. Company agrees that upon completion of the Improvements and before Company shall be allowed access to the County's sanitary sewer system, Company shall reimburse the County a total amount of \$682,000.00.
- b. In no event shall the Company's Contribution, exclusive of any interest as defined in Section 3(d) of this Agreement, exceed \$682,000.00.

- c. Upon the completion of the Improvements, the County shall provide an invoice reflecting the final amount of the Company's Contribution, including instructions for payment of such amounts, to the Company at the following address:

Attn: Accounts Payable
Westbury Family I, LP
3715 Northside Parkway NW Building 200
Suite 175
Atlanta, GA, 30327

- d. In the event the Company's Contribution is more than thirty (30) days past due, the County may:
 - i. charge Company interest at a rate of one-percent (1%) per month as to the outstanding amount of the Company's Contribution until the past due amount is paid to the County in full; and,
 - ii. refuse to allow Company access to the County's sanitary sewer system and the Improvements until the past due amount of the Company's Contribution is paid to the County in full.
- e. Within 30 days of payment in full of the invoice reflecting the Company's Contribution, inclusive of any interest contemplated by this Agreement, the County shall issue to the Company a 'SEWER CAPACTIY APPROVAL IN LIEU OF CERTIFICATION' allowing connection in accordance with this Agreement and subject to the limitations included in Section 2(d) hereof.

4. Requirements before Connection to the County's Sanitary Sewer System

- a. In order to be entitled to the terms provided in Sections 1-3 of this Agreement as a Community Enhancement Project, the Company shall, by March 1, 2027, submit documentation verifying that all applications used to qualify for such designation have been approved by the applicable governing authority. Failure to provide the documentation supporting approval of such applications shall result in the forfeiture of the Community Enhancement designation and shall result in the following superseding terms:
 - i. The Work shall be completed to the extent necessary to generate 118,279.5 gallons per day in sewer capacity credits as calculated per DeKalb County's Capacity Assurance Banking Credit Program.

- ii. Company agrees that upon completion of the Improvements and before Company shall be allowed access to the County's sanitary sewer system, Company shall reimburse the County a total amount of \$682,000.00. In no event shall the Company's Contribution, exclusive of any interest as defined in Section 3(d) of this Agreement, exceed \$682,000.00.
 - iii. The County agrees to have the Improvements required by Section 1 of this Agreement designed, constructed and operational no later than January 1, 2028.
- b. The Company agrees, prior to connecting to the County's sanitary sewer system, to comply with the following requirements:
- 1. Install low-flow plumbing fixtures;
 - 2. Prevent discharge of fats, oils, and grease (FOG) into the wastewater collection system;
 - 3. Maintain caps on service line cleanouts for sewer laterals;
 - 4. Maintain private sewer service lines; and
 - 5. Ensure roof and floor drains are not connected to the wastewater system.
- c. If Company fails to comply with the requirements listed above in Section 4(b), the County may terminate the approval to connect to the sanitary sewer system.

5. Termination.

- a. The parties agree that this Agreement shall terminate on the date on which an amount equal to the Company's Contribution and any interest payments that may be due the County pursuant to this Agreement have been paid to the County in full under this Agreement; provided that the Improvements servicing the Site are operational after the Company connects to the sanitary sewer system.
- b. Company may, for its own convenience, elect to terminate this Agreement by delivering to the County a written notice of termination specifying the effective date of termination ("Termination Date"). Any notice of termination shall be provided to the County at the following address:

Department of Watershed Management
c/o Planning & Development Supervisor
178 Sams Street, Suite A2610

Decatur, GA 30030

Such notice shall be delivered to the County at least thirty (30) days prior to the Termination Date. In case of termination of this Agreement before completion of the Work, the Company will reimburse the County as follows:

1. Where the Company terminates this Agreement on or before March 1, 2027, the Company's Contribution shall be adjusted to \$0.
2. Where the Company terminates this Agreement after March 1, 2027, the Contribution shall be adjusted to reflect 75% of the costs incurred by the County in furtherance of the Improvements from the inception of this Agreement to the Termination Date.

Where the Company exercises its termination right under this section, the County's approval of Company's request for sewer capacity will terminate. The sewer capacity request process will be restarted, and the Company will be required to submit a new request for capacity for review and approval.

6. Miscellaneous.

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.
- b. The recitals above are part of this Agreement.
- c. The Company may assign its rights under this Agreement, in whole or in part, to a successor, affiliate or assignee that has ownership interest in the Site, with the previous written consent of the County. The Company may only assign rights that accrue to the Site.
- d. Each individual executing this Agreement on behalf of a party represents and warrants to the other party that such individual is authorized to do so and that his signature binds the party on whose behalf he is executing this Agreement.
- e. County and the Company acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation, oral or written, not incorporated in

this Agreement shall be binding upon the County or the Developer. All parties must sign any amendments to the Agreement.

- f. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.
- g. If a court of competent jurisdiction renders any provision of this Agreement (or portion thereof) to be invalid or otherwise unenforceable, that provision or portion thereof shall be severed and the remainder of this Agreement shall continue in full force and effect as if the invalid provision or portion thereof was not part of this Agreement. Any such holding materially affecting the commitments herein may be the subject of further negotiations for purpose of legally revising the consideration involved. No action taken pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and should not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.
- h. Nothing under this Agreement and no action taken pursuant hereto shall cause the County and Company to be treated as a partnership, joint venture, association, or other common entity.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) counterparts, each to be considered an original by their authorized representative.

Westbury Family I, LP

DEKALB COUNTY, GEORGIA

By: _____
Signature

Lorraine Cochran-Johnson
Chief Executive Officer
DeKalb County, Georgia

Wiley A. Tucker, III, CEO

ATTEST:

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

Max Kovtoun, DCM

APPROVED AS TO SUBSTANCE:

Reginald D. Wells
Director
Department of Watershed Management

APPROVED AS TO FORM:

County Attorney Signature