

**INTERGOVERNMENTAL AGREEMENT
FOR MAINTENANCE, REPAIR AND IMPROVEMENT
OF STORMWATER SYSTEMS AND FACILITIES**

DEKALB COUNTY, Georgia, a political subdivision of the State of Georgia, and the **CITY OF TUCKER**, Georgia, a municipality in the State of Georgia, as duly authorized governmental units, freely and knowingly enter into this Agreement dated this _____ day of _____, 2018.

RECITALS AND WITNESSED

WHEREAS, the parties to this Agreement are both governmental units and authorized to provide the services set forth herein;

WHEREAS, DeKalb County, Georgia (the “County”) is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Tucker (the “City”) is a municipality created by the 2015 Georgia General Assembly pursuant to House Bill 636 (hereinafter referred to as “HB 636”) ; and

WHEREAS, pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, the City and County are authorized to enter into Intergovernmental Agreements for periods not exceeding fifty (50) years in connection with the activities which these governments are authorized to undertake;

WHEREAS, Article IX, Section II, Paragraph III of the Constitution of the State of Georgia grants each City and County the power to provide the service of stormwater collection and disposal systems;

WHEREAS, pursuant to O.C.G.A. § 36-82-61 and § 36-82-62, cities and counties are empowered to provide stormwater services and charge and collect reasonable fees for such services;

WHEREAS, the federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. 1251 *et seq.*), and rules promulgated by the United States Environmental Protection Agency pursuant to that Act, emphasizes the rule of local governments in developing, implementing, conducting and funding stormwater programs which address water quality impacts of stormwater runoff;

WHEREAS, stormwater management services and facilities will assist the City and County in meeting the regulatory obligations imposed by their national pollutant discharge elimination system (NPDES) permit, for which the City and County are co-permittees, by reducing pollution and increasing water quality within the City and County;

WHEREAS, based on the formation of the City of Tucker, the City owns and County presently maintains and operates stormwater management systems and facilities that have been developed over many years. The future usefulness of the existing systems and facilities rests on the ability of the City and County to adequately maintain and expand the systems and facilities;

WHEREAS, the provision of stormwater management services and facilities in the City promotes an essential regulatory purpose by controlling where stormwater runoff flows and how it is disposed, thereby reducing flooding, erosion and water pollution caused by stormwater runoff;

WHEREAS, stormwater management services and facilities will provide a specific service to property owners in the City by assisting in the property owner's legal obligation to control stormwater runoff from their property and ensure that runoff does not flow upon their neighbors in greater quantities than it would if the property were in an undeveloped state;

WHEREAS, a comprehensive review of developed properties in the City has been undertaken by the County which indicates the need for stormwater management services and facilities in the City and County; and

WHEREAS, the City desires to have the County perform and provide certain stormwater services and facilities as more particularly described herein;

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 do hereby agree and consent to the following:

1. Term

The term of this Agreement shall begin upon execution of this IGA and shall commence at 12:00 a.m. on May 1, 2018 through 11:59 p.m. on December 31, 2018, and unless otherwise terminated pursuant to this Agreement, and shall be automatically renewed on an annual basis at 12:00 a.m. on January 1st of each year, for a maximum of fifty (50) years. Either party may terminate this Agreement with 180 days' written notice as provided herein. [This notice shall be given by July 1st of any calendar year for termination on December 31 at 11:59 p.m.](#) of the same calendar year. Should either party elect to terminate this Agreement, the parties agree to meet and confer as to any remaining services or future intergovernmental agreements that may be needed at that time.

2. Compensation and Consideration

The County shall continue to be entitled to collect all stormwater utility fees and monies received by the County from the City and/or businesses and residents of the City (hereinafter "Stormwater Fees") for the purposes outlined in this Agreement, less any reasonable accounting or audit costs incurred by the County in maintaining records of City's Stormwater Fees and expenses.

3. Description of Services and Responsibilities of Each Party

(A) The County agrees to perform the following stormwater services for and on behalf of the City:

- (1) Receive and record requests for maintenance, repair, improvements and inspections of the City's stormwater systems and facilities, as made or submitted by the City or its residents.
- (2) Maintain and repair existing County stormwater systems and facilities located in or servicing the City as deemed necessary by the County in its sole discretion and in accordance with the County's schedule for such maintenance and repairs, if any, as amended. County's schedule shall be provided by the County to the City on or before July 1st of each calendar year, including all dams, stormwater ponds, facilities and systems located within the three parks identified in the GIS map attached hereto as Exhibit "A";
- (3) Construct stormwater capacity improvements that, in the County's sole discretion, are reasonably necessary to manage and control stormwater runoff in accordance with best management practices (BMPs) as outlined in the Georgia Stormwater Management Manual and Manual for Erosion and Sedimentation Control in Georgia, as amended. The County shall consider the City's requests for capacity improvements as provided for herein but, in its sole discretion, may accept or reject such requests and may determine that a capacity improvement request be given a higher or lower priority than requested by the City;
- (4) Sample and monitor water quality in order to comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, including dry weather screening for illicit connections, fecal coliform monitoring and water quality trend monitoring. The County will provide the City a copy of the County's monitoring and sampling results on a yearly basis within thirty (30) days of the conclusion of each monitoring year;
- (5) Maintain an annual accounting of all expenditures made on stormwater services or facilities located in or servicing the City, including any accounting or audit costs and deliver such accounting of the previous year's expenditures to the City on or before March 31 of each calendar year;
- (6) Designate a contact person or persons authorized to communicate with the City and its residents regarding stormwater service and facility needs; and

- (7) Provide the following stormwater utility maintenance services within the City limits of Tucker for all City-owned stormwater facilities and structures:
- a) Curb and gutter repairs, catch basin inspections, repairs and cleaning;
 - b) Drainage pipe repairs and maintenance;
 - c) Drainage structural repairs;
 - d) Culvert replacement;
 - e) Municipal separate storm sewer system (MS4) permitting and inspection requirements, and EPD reporting requirements;
 - f) Detention pond maintenance;
 - g) Street sweeping , based on results of current pilot program evaluation underway on major thoroughfares in 2018 and for so long as that program remains in place and is funded by the County; and
 - h) Maintenance of public, City-owned dams, stormwater ponds and facilities, including the removal of beaver dams where deemed necessary, the timing of which shall be determined at the County's discretion.

(B) The City agrees to perform the following:

- (1) The City shall, by ordinance, maintain a stormwater utility that empowers the City to provide stormwater services and facilities to its citizens;
- (2) The City shall submit, on or before July 1st of each calendar year, a list of proposed stormwater capacity improvements, prioritized in the order it wishes the County to consider each improvement, along with a good faith estimate of revenues anticipated from the City's stormwater utility fee;
- (3) The County shall be permitted to bill and collect reasonable Stormwater Fees from property owners, residents and businesses within the City of Tucker for stormwater services, in any amount, method, or manner deemed appropriate by the City, and in compliance with applicable laws;
- (4) The County may pursue collection efforts as it deems reasonable in order to obtain payment of any past-due or delinquent Stormwater Fees;

- (5) The County shall maintain an accounting of all expenditures made by the County during each calendar year, including any accounting or audit costs, which the City may request to inspect or review;
 - (6) The City shall designate a contact person authorized to communicate with the County regarding stormwater services and facility needs.
 - (7) The City shall be responsible for implementation of a public education program to its residents concerning the status of stormwater maintenance, repairs, and inspections for highly visible pollutant sources; and
 - (8) The City agrees to cooperate and coordinate with the County as to any capital improvement programs or projects planned or initiated by the County.
- (C) By entering into this Agreement, the City agrees that the County's employees and agents shall have an unlimited right to access and inspect the City's stormwater systems and facilities and operate equipment on City property in furtherance of the activities set forth herein.
- (D) While the City's approval is not required, before beginning work, the County agrees to provide the City an estimate of the cost to complete the particular project prior to the final procurement. At any time, the County may determine in its sole discretion that expedited work is necessary without the City's prior review based on the County's project list, County priorities, under the Consent Decree, or to prevent damage to persons or property.

4. Indemnification and Defense of Claims

(A) It is understood by the parties that no employees, officers, or agents of either party shall be under or subject to the direction or control of the other party, its officers, employees or agents for any of the services provided pursuant to this Agreement.

(B) The City shall defend and indemnify the County against any and all claims, suits, actions, liabilities and judgments from third parties resulting from the City's actions or inactions pursuant to the enactment of this intergovernmental agreement or performance of the City's duties as set forth herein, including all costs of defending the same. The City's duty to defend and indemnify the County shall include, but shall not be limited to, any legal challenges to the City's stormwater ordinance.

5. Notice

All notices and written requests required herein shall be sent via U.S. Mail as follows:

If to the County: Executive Assistant
 1300 Commerce Drive, 6th Floor

Decatur, Georgia 30030

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030

If to the City: City Manager
City of Tucker
4119 Adrian Street
Tucker, Georgia 30084

With a copy to: City Attorney
City of Tucker
4119 Adrian Street
Tucker, Georgia 30084

All notices sent to the above addresses shall be binding unless said address is changed in writing to the other party.

6. Termination

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever. The terminating party shall terminate by delivering to the other party with at least one-hundred and eight (180) days' notice to the other party, a Notice of Termination specifying the nature, extent, and effective date of termination.

7. No Third Party Beneficiaries

This Agreement is for the benefit of the parties hereto only and is not intended to benefit any third party or to give rise to any duties to or causes of action for any third party.

8. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

9. Venue

This agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

10. Successors and Assigns

Neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officers, agents or officials either party.

11. Entire Agreement

This Agreement constitutes the entire Agreement between the parties hereto as to all matters contained herein. No representation, oral or written, not incorporated herein shall be binding upon the parties hereto. All parties must sign any subsequent changes to this Agreement.

12. Severability

In the event any section of this agreement is declared and adjudged to be invalidated or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this agreement.

[Signatures of the parties appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on the day and date hereinabove written.

DEKALB COUNTY, GEORGIA

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

WILLIAM "TED" RHINEHART
Deputy Chief Operating Officer of
Infrastructure, DeKalb County

CITY OF TUCKER, GEORGIA

(SEAL)
FRANK AUMAN
Mayor

APPROVED AS TO SUBSTANCE:

TAMI HAMLIN
City Manager

ATTEST:

BARBARA H. SANDERS, CCC, CMC
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO FORM:

TERRY G. PHILLIPS
Supervising County Attorney

ATTEST:

City Clerk

APPROVED AS TO FORM:

BRIAN ANDERSON
City Attorney

DRAFT