

**SECOND AMENDMENT TO THE INTERGOVERNMENTAL SEWER
COOPERATION AGREEMENT OF FULTON COUNTY AND DEKALB
COUNTY FOR THE BALL MILL CREEK DRAINAGE BASIN**

This Second Amendment (“Agreement”) is made and entered into as of the _____ day of _____, 2020, by and between and FULTON COUNTY, GEORGIA a political subdivision of the State of Georgia (“Fulton”) and DEKALB COUNTY, GEORGIA, a political subdivision of the State of Georgia (“DeKalb”), (DeKalb and Fulton are each a “Party” and sometimes collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS, the parties to this Agreement are both governmental units; and

WHEREAS, pursuant to Article IX, Section II, Paragraph IV, the parties are authorized to adopt plans and exercise the power of zoning; and

WHEREAS, pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, the County and City are authorized to enter into Intergovernmental Agreements for periods not exceeding twenty (20) years in connection with the activities which these governments are authorized to undertake.

WHEREAS, on February 18, 1976, DeKalb and Fulton entered into an intergovernmental agreement known as the SEWER COOPERATION AGREEMENT OF FULTON COUNTY AND DEKALB COUNTY FOR THE BALL MILL CREEK DRAINAGE BASIN (the “Ball Mill Creek Drainage Basin IGA”) which permits DeKalb’s use of the 6 MGD Big Creek Wastewater Treatment Plant, owned and operated by Fulton County, Georgia;

WHEREAS, the Ball Mill Creek Drainage Basin IGA was amended in 1986 to address additional connections between DeKalb County and Fulton County for the use of the Wastewater Facilities (the “1986 Amendment”);

WHEREAS, the Ball Mill Creek Drainage Basin IGA remains in full force and effect for the remaining twenty-year term;

WHEREAS, the parties agree that to the extent that the Ball Mill Creek Drainage Basin IGA or the 1986 Amendment are in conflict with any of the terms of this Agreement, the terms of this Agreement shall control;

WHEREAS, the parties desire and agree to amend and update DeKalb’s continued use of the Wastewater Facilities for DeKalb’s increase of sewer flow to 1.25 MGD as provided 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:

**ARTICLE 1
DEFINITIONS**

1. Director of Watershed Management: The Director of Watershed Management of DeKalb or whoever shall in the future perform those functions relative to this Agreement.
2. Director of Public Works: The Director of Public Works of Fulton or whoever shall in the future perform those functions relative to this Agreement.
3. For purposes of this Agreement, the term “Proportional Share” shall mean a percentage of the overall costs associated with the maintenance of the transmission system I&I and maintenance/operation costs for the existing Ball Mill PS that is equal to the percentage of the total capacity of Ball Mill PS capacity allotted to DeKalb for the relevant period.
4. For the purposes of this Agreement, the term “Wastewater Facilities” includes the 24 MGD Big Creek Wastewater Water Reclamation Facility, related drainage basins, associated pumping stations and collection system, owned or operated by Fulton County, Georgia.

**ARTICLE 2
PAYMENTS**

Invoices shall be due and payable within 30 calendar days of the date of said invoices

**ARTICLE 3
SERVICES**

Fulton agrees to provide wastewater services to DeKalb during the term of this Agreement as follows:

1. Fulton County agrees to permit DeKalb’s use of the Wastewater Facilities and to accept a maximum of 1,250,000 gallons of raw sewage per day. Fulton acknowledges that additional capacity is available for DeKalb’s use based upon terms agreeable to both parties.
2. DeKalb County agrees to pay for its flow usage at an established wholesale rate (currently \$1.92 per 1,000 gallons) up to a flow of 1,250,000 gallons per day (gpd). Flows exceeding the Reserved Capacity of 1,250,000 gpd, shall be billed at the wholesale rate inclusive of a capital component, Capital/O&M (currently \$4.66 per 1,000 gallons) based on no previous

capital contribution to the system; Capital/O&M). Payments shall be due within thirty (30) days of receipt of such billing.

3. Fulton shall continue to be responsible for maintaining the Wastewater Facilities so as to permit and be sufficient for DeKalb's use as provided herein. A proposal for any maintenance of the transmission system I&I and maintenance/operation costs for the existing Ball Mill PS for which Fulton expects contribution from DeKalb per the terms of this Agreement shall be provided to DeKalb with adequate time for review and approval by DeKalb. Upon approval of such costs by DeKalb and completion of such projects by Fulton, DeKalb will be billed by Fulton County for DeKalb's Proportionate Share.

Payments shall be directed to:

**ARTICLE 4
SEWER USE ORDINANCES AND INDUSTRIAL PRETREATMENT
PROGRAMS**

For purposes of the Agreement, all discharges into the Fulton County sewer system must meet the requirements of the Fulton County Ordinances Chapter 82 Articles III Sewers and Sewage and Chapter 82 Article IV Sewer Use and Pretreatment

**ARTICLE 5
POINTS OF CONTACT**

The DeKalb's Director of Watershed Management shall be Fulton's Director of Public Works main point of contact.

ARTICLE 6 PROVISIONS OF GENERAL APPLICATION

1. AGREEMENT. The term of the Agreement shall be for a period of six (6) years, commencing upon execution by both parties and ending on December 31, 2026, unless otherwise terminated or amended as provided herein.

Either Party may unilaterally terminate this Agreement for convenience and without cause after providing one-hundred and eight (180) days' written notice to the other

Party for such termination. The Parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

2. NON-ASSIGNABILITY. Neither Party shall assign any of the obligations or benefits of this Agreement.

3. ENTIRE AGREEMENT AND MODIFICATIONS. The Parties acknowledge this Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior, contemporaneous, oral or written negotiations, agreements or understandings between the Parties regarding such matters. No representation, oral or written, not incorporated in this Agreement shall be binding upon DeKalb County or Fulton County.

This Agreement may not be changed, modified, amended or altered except in a written agreement signed by the Parties.

4. SEVERABILITY, WAIVER, VENUE AND ENFORCEABILITY. If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. No failure or delay by a Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies which it would otherwise have hereunder.

The headings contained in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties agree that this Agreement was fairly negotiated at arm's length, and neither Party shall be considered to have been the drafter of the Agreement for purposes of any rules of construction. Should any provision of this Agreement require judicial interpretation, the Parties agree 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.

5. BINDING EFFECT. This Agreement shall inure to the benefit of, and be binding upon, the respective Parties' successors.

6. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

7. NOTICE. All required notices shall be given by first class mail, except that any notice of termination shall be delivered via facsimile and email. The Parties agree to give each other non-binding duplicate notice via U.S. Mail. Notices shall be addressed to the Parties at the following addresses:

If to DeKalb County: Chief Operating Officer
1300 Commerce Drive 6th Floor
Decatur, Georgia 30030
404-371-2174, Office number
404-687-3585, Facsimile number

With a copy to: Director
Department of Watershed Management
1580 Roadhaven Drive,
Stone Mountain, GA 30083
770-621-7200, Office number
770-621-7208, Facsimile number

If to Fulton County: County Manager
Fulton County Government Center
141 Pryor Street, Suite 10061
Atlanta, Georgia 30303

With a copy to: Director, Fulton County Department of Public Works
Fulton County Government Center
141 Pryor Street, Suite 6001
Atlanta, Georgia 30303

With a copy to the: Office of the County Attorney
141 Pryor Street, S.W. Suite 4038
Atlanta, Georgia 30303
Attn: County Attorney

[SIGNATURES CONTINUED ON THE NEXT PAGE]

IN WITNESS WHEREOF, the City and County have executed this Second Amendment and Agreement through their duly authorized officers.

**DEKALB COUNTY, GEORGIA
ATTESTED:**

(SEAL)
Barbara H. Sanders, CCC,
Clerk of the Chief Executive Officer
and Board of Commissioners
DeKalb County, Georgia

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

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

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Ted Rhinehart
Deputy COO of Infrastructure

Matthew C. Welch
Deputy County Attorney

**FULTON COUNTY, GEORGIA
APPROVED FOR THE OWNER BY:**

By: _____ (SEAL)
Tonya R. Grier
Interim Fulton County Clerk to the Commission

By: _____
Robert L. Pitts, Chairman
Fulton County Board of Commissioners

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____
Office of the County Attorney

By: _____
David E. Clark, Director
Department of Public Works