

INTERGOVERNMENTAL AGREEMENT

between

THE HAPEVILLE WATER AND SEWER AUTHORITY

and

THE CITY OF HAPEVILLE, GEORGIA

THIS INTERGOVERNMENTAL AGREEMENT is entered into this ____ day of _____, 2016, between the HAPEVILLE WATER AND SEWER AUTHORITY (“Water Authority”), a public body corporate and politic of the state of Georgia existing under the Constitution of the State of Georgia, and the CITY OF HAPEVILLE, Georgia (“City”), a municipal corporation and political subdivision of the State of Georgia. The parties may each be referred to as “Party” or jointly as “Parties.”

WHEREAS, the Hapeville Water and Sewer Authority (the “Water Authority”) was duly created and is validly existing pursuant to an Act of the General Assembly of the State of Georgia (Georgia Laws 1979, p. 3461, *et seq.*, as amended (the “Act”));

WHEREAS, pursuant to the Act, the Water Authority has, among others, the power to (a) acquire by purchase and hold, maintain, lease and operate a water and sewerage system and now owns, operates and maintains a water and sewerage system (such water and sewerage system, as it now exists and as it may be hereafter added to, extended and improved, being hereinafter referred to as the “System”), (b) issue its revenue bonds for the purpose of paying all or any part of the cost of any one or more “projects” (as defined in the Act) and (c) contract with others pertaining to the water utilities and facilities; and

WHEREAS, pursuant to the Act, the Water Authority’s Board has general supervision and control over the entire water system or systems that may be constructed and placed in operation for said city, together with the right to expand or curtail such operations as it may deem advisable; and

WHEREAS, pursuant to the Act, any water or sewerage system that may be constructed under the provisions of said Act, shall be construed to be the property of the City; and

WHEREAS, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, the City of Hapeville (“City”) has the power to provide storm water and sewage collection and disposal systems and to provide for the development, storage, treatment, purification, and distribution of water; and

WHEREAS, Article IX, Section II, Paragraph I(a) of the Constitution of the State of Georgia authorizes, among other things, any City, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another City, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract provides for activities, services or facilities which the contracting parties are authorized by law to undertake or provide; and

WHEREAS, in 2001 and pursuant to O.C.G.A. § 36-82-60, *et seq.*, the Water Authority issued its Hapeville Water and Sewer Authority Revenue Refunding Bond, Series 2001 (Series 2001 Bond), in an aggregate principal amount of Six Million Five Hundred Ninety Thousand Dollars (\$6,590,000.00); and

WHEREAS, at the time of the issuance of the Series 2001 Bond, the Water Authority and the City of Hapeville entered into an intergovernmental contract, dated December 1, 2001 (the "Contract"), pursuant to which the Water Authority agreed to, among other things, issue the Series 2001 Bond, to refinance a bond issued by the City in 1994 and a bond issued by the Hapeville Development Authority (“Development Authority”) in 1991, and the City agreed, among other things, to pay to the Water Authority amounts sufficient to enable the Water

Authority to pay the debt service on the Series 2001 Bond and to levy an ad valorem property tax on all property in the City subject to such tax in the event that the Net Revenues were insufficient to pay debt service on the Series 2001 Bond; and

WHEREAS, the City and the Development Authority conveyed the City's water, sewerage, and storm drainage system (the "System's Infrastructure") to the Water Authority simultaneously with the execution of the Contract; and

WHEREAS, Section 5.1 of the Contract provides that its termination date was July 1, 2014 or when the bonds were paid in full, whichever was sooner; and

WHEREAS, Section 7.7 of the Contract provides that upon the payment of the bonds in full, the City shall have the option to purchase the System's Infrastructure for the sum of one hundred dollars (\$100.00); and

WHEREAS, Section 6.2 of the Contract provides that the City shall be responsible for the operation of the System and that the Water Authority "shall have no such obligations"; and

WHEREAS, the bonds have been paid in full; and

WHEREAS, the Water Authority desires to sell and the City desires to purchase the System's Infrastructure to the City for the sum of one hundred dollars (\$100.00); and

WHEREAS, the Water Authority and the City desire to enter into an intergovernmental contract ("Intergovernmental Agreement") with the City wherein the City will assume, for a maximum period of fifty (50) years, all constitutional and/or statutory duties, responsibilities, and obligations of the Water Authority; and

WHEREAS, the actions to be taken herein will benefit the health, safety and general welfare of the citizens of the City; and

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

**ARTICLE 1
EFFECTIVE DATE OF THIS AGREEMENT; DURATION OF CONTRACT TERM**

1.1 This Agreement shall commence on the date of last signature of the parties (“Effective Date”) and the obligations, duties and responsibilities created by this Agreement shall then begin, and, subject to the other provision of this Agreement, shall terminate at 11:59 p.m. on the date that is fifty (50) years from its Effective Date, unless otherwise terminated as set forth herein.

**ARTICLE 2
APPOINTMENT AND ACCEPTANCE OF AGENCY**

2.2 The Water Authority hereby appoints the City as its agent to perform all duties, obligations, and responsibilities assigned to it under the Act and Chapter 1, Water and Sewer Authority, of the City’s Charter and Related Laws.

2.3 The City hereby accepts the Water Authority’s appointment to act as its agent within the terms of this Agreement.

**ARTICLE 3
DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

3.1 The City shall, as the Water Authority’s agent, accept full responsibility for all duties, obligations, and responsibilities of the Water Authority regarding the acquisition, construction, operation and maintenance of projects embracing sources of water supply and the distribution and sale of water and related facilities to individuals and private concerns, as established in the Act and Chapter 1, Water and Sewer Authority, of the City’s Charter and Related Laws.

**ARTICLE 4
INDEMNIFICATION**

4.1 To the extent allowed by law, the City and the Water Authority shall mutually indemnify and hold each other harmless for any liability resulting from any claims or litigation arising from or pertaining to the City’s performance of all duties, obligations, and responsibilities of the Water Authority, as provided in Article 3.

**ARTICLE 5
TERMINATION AND REMEDIES**

5.1 Notwithstanding any provision to the contrary in this Agreement, at any time, the Parties may agree in writing to terminate this Agreement, which termination shall be effective as of the date agreed upon by the Parties.

**ARTICLE 6
NOTICES**

6.1 All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given to the other Party via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the Water Authority: Hapeville Water and Sewer Authority
Attn: Chairperson
3468 North Fulton Avenue
Hapeville, Georgia 30354

If to the City: City Manager
City of Hapeville
3468 North Fulton Avenue
Hapeville, Georgia 30354

With a copy to: City Attorney
Fincher Denmark & Minnifield LLC
8024 Fair Oaks Court
Jonesboro, Georgia 30236

**ARTICLE 7
NON-ASSIGNABILITY**

7.1 Neither Party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 8
ENTIRE AGREEMENT**

8.1 The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes 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 City or the Water Authority. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 9
AMENDMENT**

9.1 This Agreement may be amended only upon mutual consent of the Parties and upon written amendment.

**ARTICLE 10
SEVERABILITY, VENUE AND ENFORCEABILITY**

10.1 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. 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 Fulton 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.

**ARTICLE 11
BINDING EFFECT**

11.1 This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 12
COUNTERPARTS**

12.1 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.

IN WITNESS WHEREOF, the City and Water Authority have executed this Agreement through their duly authorized officers on the day and year first above written.

[SIGNATURES CONTINUED TO NEXT PAGE]

HAPEVILLE WATER AND SEWER AUTHORITY

_____ (SEAL)
Chairperson

Date: _____

ATTEST:

Secretary

CITY OF HAPEVILLE, GEORGIA

_____(SEAL)
Alan Hallman, Mayor

Date: _____

ATTEST:

Jennifer Elkins, City Clerk

APPROVED AS TO FORM:

Steven M. Fincher, Esq., City Attorney