

 <p>Fulton County Board of Commissioners Agenda Item Summary</p>	<p>BOC Meeting Date 11/20/2019</p>
<p>Requesting Agency County Manager</p>	<p>Commission Districts Affected All Districts</p>
<p>Requested Action <i>(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)</i> Request approval of a Resolution for the construction and development of a new surgery center project, the expansion of the Ponce Center/Infectious Disease Program and the provision of medical services and hospital facilities for the indigent sick in Fulton and DeKalb Counties; authorizing the use of the general funds of Fulton County in an amount sufficient to pay its obligations under the surgery center/ponce center expansion contract to be approved by the Board of Commissioners of Fulton County, Georgia prior to the issuance of the series 2019 certificates in an amount not to exceed \$70 million, and for other purposes.</p>	
<p>Requirement for Board Action <i>(Cite specific Board policy, statute or code requirement)</i> Board of Commission approval is required pursuant to O.C.G.A. § 31-7-84 and O.C.G.A. § 31-7-85</p>	
<p>Is this Item related to a Strategic Priority Area? <i>(If yes, note strategic priority area below)</i> Yes All People are Healthy</p>	
<p>Is this a purchasing item? No</p>	
<p>Summary & Background</p>	<p><i>(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)</i></p>
<p>Scope of Work: (Provide a brief project scope of work of the services/work to be provided)</p> <p>On November 7, 2018, the Board of Commissioners approved agenda item 18-0787 approving construction and development of a new surgery center, expansion of the Ponce Center/Infectious Disease Program/Ponce Project HIV Initiative, as well as authorizing issuance of Series 2019 certificates to fund a portion of these costs. The attached contract seeks to amends the originally approved Board agenda item 18-0787.</p> <p>The scope has now been refined to include only the new surgery center, and not include bond funds for the Infectious Disease Project/ Ponce Project HIV Initiative. A third project was also identified by the Grady Memorial Corporation for a Cancer Center renovation, which would also be funded by Grady and not through bonded debt.</p> <p>Fulton County is now been asked to enter into a contract with the Authority where the Authority will agree to issue the bonds, facilitate construction and development of the project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of the County. The County would agree to make payments to the Authority sufficient to enable the Authority to pay the principal and interest on a portion of the revenue certificates in a principal amount now not to exceed \$70,000,000. Of this amount, \$65.9 million would be available for project costs. Grady is also requesting that these funds will be made available at project initiation for the “CASS” project</p>	

19-0967

only, rather than as originally approved.

Contract & Compliance Information	<i>(Provide Contractor and Subcontractor details.)</i>
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19-0967

Solicitation Information	NON-MFBE	MBE	FBE	TOTAL
No. Bid Notices Sent:				
No. Bids Received:				
Total Contract Value	.			
Total M/FBE Values	.			
Total Prime Value	.			
Fiscal Impact / Funding Source	<i>(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)</i>			
.				
Exhibits Attached	<i>(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)</i>			
Source of Additional Information	<i>(Type Name, Title, Agency and Phone)</i>			

Procurement			
Contract Attached: .		Previous Contracts: .	
Solicitation Number: .	Submitting Agency: .	Staff Contact: .	Contact Phone: .
Description:.			
FINANCIAL SUMMARY			
Total Contract Value:		MBE/FBE Participation:	
Original Approved Amount: .		Amount: .	%. .
Previous Adjustments: .		Amount: .	%. .
This Request: .		Amount: .	%. .
TOTAL: .		Amount: .	%. .
Grant Information Summary:			
Amount Requested: .	<input type="checkbox"/>	Cash	
Match Required: .	<input type="checkbox"/>	In-Kind	
Start Date: .	<input type="checkbox"/>	Approval to Award	
End Date: .	<input type="checkbox"/>	Apply & Accept	
Match Account \$: .			
Funding Line 1: .	Funding Line 2: .	Funding Line 3: .	Funding Line 4: .
KEY CONTRACT TERMS			
Start Date: .		End Date: .	
Cost Adjustment: .	Renewal/Extension Terms: .		
ROUTING & APPROVALS (Do not edit below this line)			
.	Originating Department:	.	Date: .
.	County Attorney:	.	Date: .
.	Purchasing/Contract Compliance:	.	Date: .
.	Finance/Budget Analyst/Grants Admin:	.	Date: .
.	Grants Management:	.	Date: .
.	County Manager:	.	Date: .

RESOLUTION OF THE BOARD OF COMMISSIONERS OF FULTON COUNTY, GEORGIA AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A SURGERY CENTER CONTRACT BETWEEN THE FULTON-DEKALB HOSPITAL AUTHORITY AND FULTON COUNTY, GEORGIA, REGARDING THE ACQUISITION, CONSTRUCTION, EQUIPPING AND DEVELOPMENT OF A NEW SURGERY CENTER PROJECT AND THE PROVISION OF MEDICAL SERVICES AND HOSPITAL FACILITIES FOR THE INDIGENT SICK IN FULTON AND DEKALB COUNTIES; AUTHORIZING THE USE OF THE GENERAL FUNDS OF FULTON COUNTY, GEORGIA IN AN AMOUNT SUFFICIENT TO PAY ITS OBLIGATIONS UNDER THE SURGERY CENTER CONTRACT; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to the provisions of Georgia Laws 1941, pp. 241 *et seq.*, Fulton County, Georgia (the “County”) and DeKalb County, Georgia (“DeKalb”) were authorized to establish a hospital authority and, pursuant thereto, the Board of Commissioners of the County (the “Board of Commissioners”) by resolution adopted on August 6, 1941 and the Board of Commissioners of DeKalb County by resolution adopted on August 9, 1941 duly established “The Fulton-DeKalb Hospital Authority” (the “Authority”) in accordance with the law then in effect; and

WHEREAS, the Hospital Authorities Law, Article 4, Chapter 7 of Title 31 of the Official Code of Georgia Annotated (the “Act”), provides for the powers, duties and functions of hospital authorities, including the Authority; and

WHEREAS, pursuant to the Official Code of Georgia Annotated Section 36-1-19.1, counties having a population of 400,000 or more are authorized to provide for the appropriation of money to any institution for purely charitable purposes, including health; and

WHEREAS, the population of the County pursuant to the 2010 U.S. census was 920,581 and the population of DeKalb County pursuant to the 2010 U.S. Census was 691,893; and

WHEREAS, pursuant to Section 31-7-84 of the Act, a county shall have the power to adopt a resolution and execute a contract for the use of facilities and services of an authority and provision shall be made annually by such county contracting with an authority for the payment for the services and facilities of an authority used by a county out of general funds or out of tax revenues realized for the purpose of providing medical care or hospitalization for the indigent sick and others entitled to the use of the services and facilities of an authority; and

WHEREAS, pursuant to Section 31-7-85 of the Act, a county, for the purpose of using the facilities of an authority, is authorized by action of its governing body to enter into contracts with an authority for a period not exceeding 40 years as shall be necessary to provide for the continued maintenance and use of the facilities of an authority; and

WHEREAS, the Authority now owns a complete medical center including hospital facilities known as “Grady Memorial Hospital” and outpatient clinical facilities and related parking and other facilities (collectively, the “Grady Health System”); and

WHEREAS, the Authority has leased the Grady Health System pursuant to a Lease and Transfer Agreement, dated as of April 7, 2008 (the “Lease Agreement”), to Grady Memorial Hospital Corporation, a Georgia nonprofit corporation (the “Corporation”) which now operates the Grady Health System; and

WHEREAS, the County and DeKalb County (together, the “Counties”), together with the Authority, entered into that certain contract dated June 20, 1984, as amended by amendments dated December 30, 1987, July 14, 1988, December 29, 1988, June 22, 1989 and December 14, 1989, and as extended pursuant to certain contract extensions (such contract, as amended and extended, being referred to herein as the “Operating Contract”), pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities for the indigent sick of the Counties and the Counties agreed, among other things, to pay the operating costs and expenses of the Grady Health System, all in accordance with the terms thereof; and

WHEREAS, the Authority and the County heretofore issued and sold \$136,990,000 in original principal amount of The Fulton-DeKalb Hospital Authority Second Series Taxable Refunding Revenue Certificates, Series 2012 (the “Series 2012 Certificates”) on terms and conditions set forth in a Certificate Resolution adopted on November 1, 2012 (the “2012 Certificate Resolution”) in order to refinance certain outstanding certificates; and

WHEREAS, the Authority and the County entered into an intergovernmental contract dated as of November 21, 2012 (the “2012 Contract”), pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities needed to serve the indigent sick of the County and the County agreed, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of and interest on the Series 2012 Certificates; and

WHEREAS, the Operating Contract and the 2012 Contract are authorized under the Act and payable by the County from specified sums derived from an annual ad valorem tax levy within the statutory seven mill limit; and

WHEREAS, the Authority’s right to receive payments from the Counties under the Operating Contract from ad valorem taxes is subordinate to the Authority’s right to receive payments under the 2012 Contract which has a first and prior lien on the specified sums derived from the annual ad valorem tax levy within the statutory seven mill limit (or the general funds if they are being utilized by the County to make debt service payments); and

WHEREAS, the Authority and the County have determined that the acquisition, construction, equipping and development of a new center for advanced surgical services to be housed in an approximately 10-story facility that includes a multi-story parking garage containing approximately 600 parking spaces and an outpatient surgery center containing approximately 225,000 square feet of space to be located at the former site of the Aldredge Building in Downtown Atlanta (collectively, the “Project”) and to pay the costs associated therewith will benefit the health and welfare of the County residents; and

WHEREAS, it is estimated that the total cost of the Project will be approximately \$205,000,000 of which not more than \$98,895,000 (the “Public Portion” is expected to be paid though the Authority’s issuance of one or more series or issues of tax-exempt or taxable revenues certificates (the “Revenue Certificates”) and the remainder of such costs is expected to

be paid through private philanthropic sources and funds provided by the Corporation (the “Private Portion”); and

WHEREAS, of the Public Portion of the Project Costs, it is proposed that the County support the provision of \$65,930,000 (the “Fulton Net Proceeds”) and that DeKalb support the provision of \$32,965,000 (the “DeKalb Net Proceeds”); and

WHEREAS, in order to provide the Fulton Net Proceeds and secure a portion of the Revenue Certificates in a principal amount not to exceed \$70,000,000 (the “Series 2019 Certificates”), the Authority and the County desire to enter into a contract (the “Surgery Center Contract”), pursuant to which the Authority would agree, among other things, to facilitate the construction and development of the Project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of the County, and the County would agree, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of and interest on the Series 2019 Certificates, which shall include amounts required to pay issuance costs and capitalized interest; and any obligation by the County under the Surgery Center Contract, taking into account its obligations under the prior contracts listed herein, may be subject to the statutory seven mill limit under the Act or such greater limitation as may hereafter be authorized by law; and

WHEREAS, the County is expecting that in order to provide for the DeKalb Net Proceeds, DeKalb will also enter into an intergovernmental contract with the Authority for the purpose of supporting issuance by the Authority of revenue certificates in the principal amount of at least \$35,000,000 (the “DeKalb Certificates”) and the execution and delivery of the Surgery Center Contract by the County will be conditioned on the approval and execution by DeKalb of a resolution approving the DeKalb Surgery Center Contract which shall be in similar form and substance to this resolution and the Surgery Center Contract; and

WHEREAS, the Authority and the County have agreed that the Corporation, combined with private philanthropy and other sources, will finance the balance of the Project as part of a public/private partnership and the Corporation has raised funds or committed its own funds in the amount of \$106,105,000, which are restricted for use in the acquisition, construction, equipping and development of the Project (the “Private Proceeds”), and the Corporation has agreed to be responsible for any Project cost overruns and will reserve an additional \$25,000,000 on its books for such purpose; and

WHEREAS, it is expected that the Authority will adopt a resolution approving its execution, delivery and performance of the Surgery Center Contract and the issuance of the Series 2019 Certificates relating to the Project; and

WHEREAS, the Authority and the Corporation have entered into a Development and Funding Agreement, dated as of March 1, 2019 and will enter into an Amended and Restated Development and Funding Agreement, to be dated on or around December 1, 2019 (the “Development Agreement”) which authorizes the construction and development of the Project by the Corporation on behalf of the Authority and specifies the use and distribution of the Fulton Proceeds, the DeKalb Proceeds and the Private Proceeds for payment of Project costs on a pro rata basis as provided in the Development Agreement; and

WHEREAS, the Surgery Center Contract is authorized by the provisions of Article IX, Section III, Paragraph I(a) and (c) of the Constitution of the State of Georgia and by the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF FULTON COUNTY, GEORGIA, and it is hereby resolved by authority of the same, that the execution, delivery and performance by the County of the Surgery Center Contract in substantially the form attached hereto as Exhibit "A," is hereby authorized and approved, subject to such changes, insertions or omissions as may be approved by the Chairman or Vice Chair of the Board of Commissioners and subject to the condition that the Series 2019 Certificates shall be issued in a principal amount not to exceed \$70,000,000, mature not later than January 1, 2050, bear interest at a rate not to exceed 7.0% per annum and provide that the maximum annual payments of principal and interest shall not exceed \$74,900,000. The Chairman and Vice Chair of the Board of Commissioners are each hereby authorized to execute and deliver the Surgery Center Contract for and on behalf of the County and the Clerk of the County is hereby authorized to attest to, certify and affix the seal of the County thereupon and that the execution of the Surgery Center Contract by the Chairman or Vice Chair of the Board of Commissioners shall constitute conclusive evidence that such Surgery Center Contract conforms to the provisions of this resolution;

BE IT FURTHER RESOLVED that as part of the public/private partnership in support of the Project, the Corporation will prior to the issuance of the Series 2019 Certificates (i) secure from private sources not less than \$106,105,000 for the acquisition, construction, equipping and development of the Project, which may take the form of donations, pledges and corporate funds provided by the Corporation (including \$7.5 million which has already been applied to pay for the Project site), (ii) permit the County to review all of such commitments and pledges in the offices of the Corporation; it being understood that the identity of all donors and pledgers (other than the Woodruff Foundation and the Corporation) shall be kept confidential; and (iii) reserve on its books for the purpose of paying for Project cost overruns a total of \$25,000,000; and

BE IT FURTHER RESOLVED that prior to the issuance of the Series 2019 Certificates the Corporation shall provide evidence to Fulton County that it has secured the Private Proceeds in the amount of \$106,105,000 in pledges, donations and corporate funds, along with reserves for \$25,000,000 to be used for cost overruns; and

BE IT FURTHER RESOLVED that for the purpose of providing funds for payment under the Surgery Center Contract, the County is hereby authorized and required to use funds from its general fund in an amount sufficient to pay amounts owed under the Surgery Center Contract, as such payments shall become due and payable, and such funds are hereby irrevocably pledged and appropriated to the payment of moneys due under the Surgery Center Contract; provided that DeKalb County executed a Surgery Center Contract with the Authority and also irrevocably pledges and appropriates the payment of moneys due under its Surgery Center Contract with the Authority; and

BE IT FURTHER RESOLVED, that the County's participation in the acquisition, construction, equipping and development of the Project is subject to and dependent upon the execution of the DeKalb Surgery Center Contract; and

BE IT FURTHER RESOLVED that all actions heretofore taken by the County relating to the execution, delivery and performance by the County of the Surgery Center Contract are hereby ratified, and the Chairman, Vice Chair, Director of Finance, County Attorney and County Clerk are each hereby authorized and directed to take any and all actions, and to execute and

deliver for and on behalf of the County such contracts, instruments and other documents (including but not limited to a certificate purchase agreement, preliminary or final official statement or other offering document and continuing disclosure agreement), which any of such persons may deem necessary or desirable in order to effectuate the execution, delivery and performance by the County of the Surgery Center Contract and the Series 2019 Certificates and the actions contemplated by this resolution and the execution and delivery of any such contracts, instruments or other documents (including but not limited to a certificate purchase agreement, preliminary or final official statement or other offering document and continuing disclosure agreement) by any of such officers as authorized herein shall be conclusive evidence that such are authorized and approved in accordance with this resolution; and

BE IT FURTHER RESOLVED that the issuance of the Series 2019 Certificates by the Authority is hereby approved; and

[Remainder of Page Intentionally Left Blank]

BE IT FURTHER RESOLVED that any or all resolutions or ordinances or parts of resolutions or ordinances in conflict with this resolution are, to the extent of such conflict, hereby repealed, and this resolution shall take immediate effect and shall be in full force and effect from and after the date of its adoption.

SO PASSED AND ADOPTED, this ____ day of _____, 2019.

ROBERT L. PITTS
Chairman, Fulton County Board of
Commissioners

ATTEST:

APPROVED AS TO FORM:

TONYA GRIER
Fulton County Clerk to the Commission

PATRISE PERKINS-HOOKER
County Attorney

EXHIBIT "A"

Surgery Center Contract (Fulton)

CLERK'S CERTIFICATE

STATE OF GEORGIA,

FULTON COUNTY

I, Tonya Grier, Clerk of the Board of Commissioners of Fulton County, do hereby certify that the foregoing pages constitute a true and correct copy of the resolution adopted by the Board of Commissioners of Fulton County at an open public meeting duly called and lawfully assembled at __ .m., on the __ day of _____, 2019, the original of said resolution being duly recorded in the Minute Book of the Board of Commissioners, which Minute Book is in my custody and control. I do hereby further certify that the following members of the Board of Commissioners were present at said meeting:

and that the following members were absent:

and that said resolution was duly adopted by vote of:

yes _____ no _____

WITNESS my hand and the official seal of Fulton County, Georgia, this the ____ day of _____, 2019.

Clerk
Board of Commissioners
of Fulton County

**SURGERY CENTER CONTRACT
(Fulton)**

THIS SURGERY CENTER CONTRACT (as amended and supplemented, the “Contract”) is made and entered into _____, 2019, by and between FULTON COUNTY, GEORGIA, acting by and through its Board of Commissioners (“Fulton”), and THE FULTON-DEKALB HOSPITAL AUTHORITY, a public body corporate and politic (the “Authority”).

WITNESSETH:

WHEREAS, pursuant to the provisions of Georgia Laws 1941, pp. 241 et seq., Fulton and DeKalb County, Georgia (“DeKalb” and together with Fulton, the “Counties”) were authorized to establish a hospital authority and, pursuant thereto, the Board of Commissioners of Fulton County by resolution adopted on August 6, 1941 and the Board of Commissioners of DeKalb County by resolution adopted on August 9, 1941 duly established “The Fulton-DeKalb Hospital Authority” (the “Authority”) in accordance with the law then in effect; and

WHEREAS, the Hospital Authorities Law, Article 4, Chapter 7 of Title 31 of the Official Code of Georgia Annotated (the “Act”), provides for the powers, duties and functions of hospital authorities including the Authority; and

WHEREAS, the Authority has been and is now legally created, existing and operating in accordance with all of the terms and provisions of the Act and will continue to comply with all of the requirements thereof; and

WHEREAS, the Authority now owns a complete medical center in the City of Atlanta including hospital facilities known as “Grady Memorial Hospital” and outpatient clinical facilities and related parking and other facilities (collectively, the “Grady Health System”); and

WHEREAS, the Authority has leased the Grady Health System pursuant to a Lease and Transfer Agreement, dated April 7, 2008 (the “Lease Agreement”), to Grady Memorial Hospital Corporation (the “Corporation”) which now operates the Grady Health System; and

WHEREAS, pursuant to Section 31-7-85 of the Act, a county, for the purpose of using the facilities of an authority, is authorized by action of its governing body to enter into contracts with an authority for a period not exceeding 40 years as shall be necessary to provide for the continued maintenance and use of such facilities of the authority; and

WHEREAS, the Counties and the Authority entered into that certain contract dated June 20, 1984, as amended by amendments dated December 30, 1987, July 14, 1988, December 29, 1988, June 22, 1989 and December 14, 1989 (such contract, as amended, being referred to herein as the “Operating Contract”) pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities for the indigent sick of the Counties and the Counties agreed to pay the operating costs and expenses of Grady Health System, all in accordance with the terms thereof; and

WHEREAS, the Authority and Fulton heretofore issued and sold \$136,990,000 in original principal amount of The Fulton-DeKalb Hospital Authority Second Series Taxable

Refunding Revenue Certificates, Series 2012 (the “Series 2012 Certificates”) on terms and conditions set forth in a Certificate Resolution adopted on November 1, 2012 (the “2012 Certificate Resolution”) in order to refinance certain outstanding certificates; and

WHEREAS, the Authority and Fulton entered into a Contract dated as of November 21, 2012 (the “2012 Contract”), pursuant to which the Authority agreed, among other things, to continue to provide medical services and hospital facilities needed to serve the indigent sick of Fulton County and Fulton agreed, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of and interest on the Series 2012 Certificates; and

WHEREAS, the Operating Contract and the 2012 Contract are authorized under the Act and payable by Fulton from either its general fund or, if applicable, specified sums derived from an annual ad valorem tax levy within the statutory seven mill limit; and

WHEREAS, the Authority’s right to receive payments from the Counties under the Operating Contract from ad valorem taxes is subordinate to the Authority’s right to receive payments under the 2012 Contract which has a first and prior lien on the specified sums derived from the annual ad valorem tax levy within the statutory seven mill limit; and

WHEREAS, the Authority and Fulton have determined that, in order to benefit the health and welfare of Fulton County residents, the financing of a portion of the costs of an expansion of the Grady Health System should be accomplished through the Authority’s issuance of one or more series or issues of tax-exempt or taxable revenues certificates (the “Revenue Certificates”), the proceeds of which will be applied to the acquisition, construction, equipping and development of a new center for advanced surgical services to be housed in an approximately 10-story facility that includes a multi-story parking garage containing approximately 600 parking spaces and an outpatient surgery center containing approximately 225,000 square feet of space to be located at the former site of the Aldredge Building in Downtown Atlanta (collectively, the “Project”) and to pay the costs associated therewith, on the terms and conditions set forth in a certificate resolution adopted by the Authority on _____, 2019 (the “Certificate Resolution”); and

WHEREAS, in connection with the issuance of the Series 2019 Certificates, the Authority has approved the execution and delivery of (i) a Project Fund Custodian Agreement (the “Project Fund Custodian Agreement”) among the Authority, the Corporation and U.S. Bank National Association, as the Project Fund Custodian (the “Project Fund Custodian”), and (ii) a Paying Agent Agreement (the “Paying Agent Agreement”) between the Authority and U.S. Bank National Association, as the paying agent (the “Paying Agent”); and

WHEREAS, in order to secure a portion of the Revenue Certificates in a principal amount of \$70,000,000 (the “Series 2019 Certificates”), the Authority and Fulton desire to enter into this Contract pursuant to which the Authority agrees, among other things, to facilitate the acquisition, construction, equipping and development of the Project and to continue to provide medical services and hospital facilities needed to serve the indigent sick of Fulton County, and Fulton agrees, among other things, to make payments to the Authority sufficient to enable the Authority to pay the principal of, premium (if any) and interest on the Series 2019 Certificates, the net proceeds of \$65,930,000 after payment of issuance costs and capitalized interest will

constitute the Fulton portion of the public contribution for the Project (the “Fulton Proceeds”); and

WHEREAS, in order to provide additional public funds to pay the costs of the Project, the Authority shall issue additional Revenue Certificates in a principal amount of \$35,000,000 which, after payment of issuance costs and capitalized interest are to provide net proceeds of \$32,965,000 (the “DeKalb Proceeds”) constituting the DeKalb portion of the public contribution for the Project and which shall be secured by a contract between DeKalb and the Authority in similar form and substance to this Contract (the “DeKalb Contract”) it being understood that the execution and delivery of such DeKalb Contract is a condition to the issuance of the Series 2019 Certificates by the Authority; and

WHEREAS, it is estimated that the total cost of the Project will be approximately \$205,000,000 of which not more than \$98,895,000 will be paid from the Fulton Proceeds and the DeKalb Proceeds; and

WHEREAS, the Authority and Fulton have agreed that the Corporation, combined with private philanthropy and other sources, will finance the balance of the Project costs as part of a public/private partnership and the Corporation has raised and will collect funds in the amount of \$106,105,000, which are restricted for use in the acquisition, construction, equipping and development of the Project (the “Private Proceeds”), and which includes the Corporation’s commitment to provide its own funds to be used for Project costs, and the Corporation has agreed to be responsible for any Project cost overruns and will reserve \$25,000,000 on its books for such purpose; and

WHEREAS, the Authority and the Corporation have entered into a Development and Funding Agreement, dated as of March 1, 2019 and will enter into an Amended and Restated Development and Funding Agreement, to be dated on or around December 1, 2019 which authorizes the construction and development of the Project by the Corporation on behalf of the Authority and specifies the use and distribution of the Fulton Proceeds and the DeKalb Proceeds (collectively, the “Public Proceeds”) and the Private Proceeds for payment of Project costs on a pro rata basis as provided in the Development Agreement; and

WHEREAS, the execution and delivery of this Contract by the Authority was authorized by the Authority pursuant to the Certificate Resolution, and the execution and delivery of this Contract by Fulton was authorized by a resolution of its Board of Commissioners adopted on _____, 2019; and

WHEREAS, pursuant to the Certificate Resolution, provision is made whereby under certain terms and conditions, including the consent of Fulton as provided in this Contract, additional certificates or other obligations may be issued by the Authority ranking on a parity as to lien on the Contract Revenues (as therein defined) with the lien securing the Series 2019 Certificates (the “Additional Certificates”); and

WHEREAS, the Authority and Fulton have agreed that the Series 2019 Certificates will be issued on a parity with the Series 2012 Certificates and the lien on the Contract Revenues ranking pari passu with the Series 2012 Certificates; and

WHEREAS, the Authority and Fulton had agreed that the Series 2019 Certificates would not be issued until the Project had received a Certificate of Need from the Georgia Department of

Community Health and was subject to a guaranteed maximum price construction contract, and such Certificate of Need and guaranteed maximum price construction contract have been received by the Corporation; and

WHEREAS, the Authority, pursuant to the Certificate Resolution, pledged this Contract and the Contract Revenues to the payment of the Series 2019 Certificates and any Additional Certificates hereafter issued (with the consent of Fulton as provided in this Contract) pursuant to the terms of the Certificate Resolution (collectively, the “Certificates”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Certificate Resolution; and

WHEREAS, this Contract is authorized by the provisions of Article IX, Section III, Paragraph I(a) and(c) of the Constitution of the State of Georgia and by the Act;

NOW, THEREFORE, in consideration of the premises and undertakings as hereinafter set forth, it is agreed by and between Fulton and the Authority, each acting by and through its duly authorized officers, pursuant to resolutions duly adopted and properly passed:

1. *Effective Date.* This Contract shall take effect as of the date of the issuance and delivery of the Series 2019 Certificates and shall continue until midnight on January 1, 2050 or until such time as the Certificates as to principal, interest and redemption premium, if any, have been paid or provision duly made therefor in accordance with the Certificate Resolution, but in no event shall the term of this Contract exceed forty (40) years.

2. *Effect on Other Contracts.* Except to the extent set forth in Section 4 hereof, nothing contained herein shall affect or impair the obligations of each of the parties hereto set forth in the Operating Contract or the 2012 Contract, all of the terms and conditions of which shall remain in full force and effect and are hereby ratified and reaffirmed. The obligations of Fulton under the Series 2012 Contract and this Contract shall be on a parity.

3. *Authority Obligations.* The Authority covenants and agrees, as follows:

(a) Simultaneously with the issuance and delivery of the Series 2019 Certificates, the proceeds derived from the sale of the Series 2019 Certificates shall be delivered or caused to be delivered by the Authority as follows:

(i) \$65,930,000 to [U.S. Bank, National Association], serving as Project Fund Custodian under that certain Project Fund Custodian Agreement (the “Project Fund Custodian Agreement”) between the Authority, the Corporation and the Project Fund Custodian, for deposit into the Fulton Project Cost Account in the Project Fund created under the Project Fund Custodian Agreement for the construction and development of the Project;

(ii) \$_____ to [U.S. Bank, National Association], the Paying Agent under the Paying Agent Agreement (the “Paying Agent”) for deposit into the Cost of Issuance Fund created under the Certificate Resolution for the

payment of the costs incurred in connection with the issuance of the Series 2019 Certificates; and

[(iii) \$_____ to the Paying Agent for deposit into the Capitalized Interest Account created under the Certificate Resolution;]

(b) As a condition to the issuance and delivery of the Series 2019 Certificates, the Authority has entered into the Development Agreement with the Corporation with regard to the Corporation's acquisition, construction, equipping and development of the Project on behalf of the Authority and the disbursement of the Public Proceeds and the Private Proceeds on a pro rata basis in accordance with the provisions of the Development Agreement for such purpose. The Development Agreement is in a form and substance satisfactory to the Chairman and the Fulton County Attorney.

The Authority will provide updates to Fulton, as requested, regarding the construction budget, timeline of construction, MBE utilization, utilization of the Fulton Proceeds and contractor/subcontractor information as provided by the Corporation in the development of the Project.

(c) Prior to and as a condition of the issuance and delivery of the Series 2019 Certificates, the Corporation will deposit at least \$15,000,000 into the Private Project Cost Account (as defined in the Development Agreement) and will have at least \$50,000,000 deposited at the Community Foundation for Greater Atlanta and restricted for the development of the Project. The Corporation has committed to obtain a total of \$106,105,000 in the form of cash, commitments or pledges from third parties and from its own funds, of which \$7.5 million has already been applied to pay for the Project site. In addition, the Corporation will also have at least \$25,000,000 reserved on its books at all times and restricted for use for the Project in the event of any cost overruns.

(d) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by Fulton, the Authority will maintain and have available or cause to have maintained and available facilities to care for the indigent sick of Fulton, as may be properly certified as entitled to receive treatment pursuant to the rules and regulations of the Authority.

(e) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by Fulton, the Authority will maintain and have available or cause to have maintained and available facilities to care for all emergency cases affecting the residents of Fulton and those cases affecting transients if the accident took place, or the emergency arose, within the corporate limits of Fulton.

(f) At all times during the term of this Contract and in accordance with the rules and regulations of the Authority or any subsequent agreement by Fulton, when requested to do so by Fulton, the Authority will furnish or cause to be furnished treatment, medicine, care and the facilities of the Authority for the treatment and care of employees of Fulton who are injured in the line of duty and in the service of Fulton and in all other cases when requested so to do by Fulton where Fulton shall assume

responsibility for the cost of hospitalization and treatment of any injured person. Nothing herein shall prevent the Authority or the Corporation from receiving and collecting from insurance or other sources funds covering the cost of medical care or hospitalization of such person and the Authority and the Corporation shall likewise have full rights against any sums paid by tortfeasors or others under liability for the medical care and/or hospitalization of such persons.

(g) All funds received by the Authority under the provisions of Section 4 hereof, if any, shall not be commingled with any other funds of the Authority or of any other person or entity, and any such moneys so received shall be forthwith deposited with the Paying Agent and used and applied in the order of priority set forth in [Section 602] of the Certificate Resolution to the payment of the principal of and the interest on the Series 2019 Certificates as same become due and payable on each Interest and Principal Payment Date.

(h) The Authority shall not issue any certificates, including Additional Certificates (other than the Series 2019 Certificates the issuance of which, by execution and delivery of this Contract and the Certificate Resolution, have been approved) or incur any other obligation payable from or having a lien on the revenues of the Authority derived under this Contract, unless prior thereto the Authority and Fulton shall have entered into an amendment or supplement to this Contract, or a new contract, under the terms of which Fulton is obligated to pay to the Authority amounts sufficient to enable the Authority to pay debt service on all Certificates Outstanding, including the revenue certificates proposed to be issued, and to pay such other obligations proposed to be incurred.

(i) The Authority shall not cause an unconditional notice of optional redemption of the Series 2019 Certificates to be sent to the owners thereof unless the Authority has on hand or has made provision, from refunding certificates or otherwise, for amounts sufficient to redeem the Series 2019 Certificates to be optionally redeemed to be on deposit with the Paying Agent on or prior to the redemption date.

(j) The Authority shall continue to comply with the provisions of the Operating Contract as the same may from time to time be amended, including, without limitation, the non-discrimination, audit and budget requirements described therein.

(k) The Authority will not create, or suffer to be created, any lien, security interest, encumbrance or charge upon operating revenues of the Authority without the prior written consent of Fulton, except for the following:

(i) Liens to secure indebtedness having an original maturity of less than or equal to one year and not renewable at the option of the Authority for a term greater than one year beyond the date of original incurrence; provided, however, that there shall be a period of at least five consecutive days in each fiscal year during which no such indebtedness is outstanding; and

(ii) Liens to secure indebtedness for capital expenditures in an amount not to exceed \$25 million in the aggregate outstanding at any time, and the incurrence of such indebtedness, in and of itself, shall not result in an increase in payments due by the Counties hereunder or under the Operating Contract.

(l) The Authority shall provide to Fulton the Authority's audited and issued financial statement no later than May 15 of each calendar year.

Nothing contained in this paragraph shall limit the ability of the Authority or the Corporation to acquire additional equipment or other capital assets, including real property, pursuant to an installment purchase, capitalized lease or similar obligation and nothing contained herein shall limit the right of the Authority or the Corporation to grant a security interest in or create a lien on such property so acquired provided the Authority does not pledge or create a lien on operating revenues of the Authority unless otherwise authorized. The incurrence of such obligation, in and of itself, shall not result in an increase in payments due by Fulton hereunder or under the Operating Contract.

4. *Fulton's Obligations*

(a) Fulton hereby covenants and agrees to pay to the Paying Agent for the benefit of the Authority for deposit in the applicable debt service account for the Series 2019 Certificates on or before the twentieth (20th) day of each month, commencing on the month immediately preceding the month in which the first principal or interest payment on the Series 2019 Certificates is due and payable, the amount which will be sufficient (taking into account moneys on deposit in the Capitalized Interest Account) to pay as follows: (i) an amount equal to the interest which has accrued and will accrue since the last Interest Payment Date for the Series 2019 Certificates to which interest has been paid, or from the initial date of such Series 2019 Certificates, if no interest has been paid, to and including the last day of such month, plus (ii) an amount such that, if the same amount were paid to the Paying Agent on the first Business Day of each succeeding month for the period from such month to and including the next Principal Payment Date, the aggregate amount so transferred to such debt service account would equal the Principal Installment coming due on the next Principal Payment Date for the Series 2019 Certificates, less (iii) so long as Fulton is not past due in any payment required to be made hereunder, any amounts actually on deposit in the applicable debt service account for the Series 2019 Certificates (other than payments made by Fulton under subparagraphs (i) and (ii) of this Section 4(a)) at the time any payment is to be made hereunder but excluding moneys held in any debt service account for payment of Series 2019 Certificates which have matured but which have not been presented for payment.

(b) The obligation of Fulton to make the payments required by the Operating Contract or any future contract between the parties hereto for the purpose of providing funds to pay the operating costs and operating expenses of the Grady Health System (collectively, the "Subordinate Obligations") are hereby expressly made junior and subordinate to the obligations of Fulton under this Contract and the 2012 Contract. The obligation of Fulton to make payments required by the 2012 Contract and this Contract will be on parity with each other. The Subordinate Obligations shall not include those under any contract entered into by Fulton

pursuant to Section 4(g) hereof for the purpose of paying or securing debt service on any additional certificates or obligations issued by the Authority.

(c) The amounts payable under this Section 4 shall be used by the Authority only to provide for the payment of the principal of and the interest on the Series 2019 Certificates as same become due and payable, on each Interest Payment Date and Principal Payment Date (as such terms are defined in the 2019 Certificate Resolution), as applicable. The payments described in subparagraph (a) shall be made directly to the Paying Agent for the account of the Authority so as to assure the availability of moneys at all times to pay in full the Series 2019 Certificates as same become due and payable, on each Interest Payment Date and Principal Payment Date and shall be kept separate from and not commingled with any payments made by Fulton in connection with any other outstanding obligations. The obligation of Fulton to make the payments required under this Section 4 is for the benefit of the owners of the Series 2019 Certificates and shall be absolute and unconditional and continue unabated until such time as the principal of, premium, if any, and interest on the Series 2019 Certificates shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Certificate Resolution; and this Contract shall not be terminated and such payments shall not be suspended, discontinued, abated or reduced for any reason whatsoever, including, without limitation (i) the damage to or destruction of the Grady Health System or any part thereof including the Project, (ii) failure of proper operation and maintenance of the Grady Health System or any part thereof including the Project, (iii) force majeure, (iv) the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, (v) the taking by eminent domain of title to or temporary use of the Grady Health System or any part thereof including the Project, (vi) commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either thereof, or (vii) any failure of any party (including Fulton) to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Contract, the Operating Contract, the Development Agreement, the 2012 Contract, the Certificate Resolution, the Project Fund Custodian Agreement, the Paying Agent Agreement or otherwise, or any defense or any right of setoff, counterclaim or recoupment arising out of any such failure. Nothing contained in this subparagraph shall be construed to release the Authority from the performance of any of the agreements on its part herein contained; and in the event the Authority should fail to perform any such agreement on its part, Fulton may institute such action against the Authority as Fulton may deem necessary to compel performance so long as such action does not abrogate the obligations of Fulton contained in this subparagraph, including, without limitation, making such adjustments in payments under the Subordinate Obligations.

(d) As it does in its normal course of operation, Fulton shall levy an ad valorem tax on all taxable property located within the boundaries of Fulton subject to taxation for such purposes, as now existent and as same may hereafter be extended, at such rate or rates and, if applicable, within the maximum millage limitation now authorized by law or such greater limitation as may hereafter be authorized by law, as may be necessary to produce in each calendar year revenues which shall be sufficient to fulfill Fulton's obligations hereunder and under the 2012 Contract, from which revenues there shall be appropriated, prior to any other appropriations for the Authority for the payment of any Subordinate Obligations, Nothing herein contained, however, shall be construed as limiting the right of Fulton to pay the obligations

hereunder assumed out of its general funds or from other sources lawfully available to it for such purpose.

(e) In order for the Authority to meet its debt service requirements on the Series 2019 Certificates, to assure the payments therefor as may be required to comply with subparagraph 4(a), there shall be and there is hereby created a lien on any and all revenues realized by Fulton under and pursuant to the provisions of subparagraph (d) above, which lien is prior and superior to any lien with respect to any taxes levied from which amounts are to be paid with respect to any Subordinate Obligations, but which lien shall be on a parity basis with respect to the payments required under the 2012 Contract securing debt service on any outstanding Series 2012 Certificates which are on a parity with the Series 2019 Certificates. Nothing contained in this subparagraph (e) of Section 4 is intended, or shall be construed so as, to affect the direct general obligation indebtedness of Fulton. Nothing contained in this subparagraph (e) of Section 4 is intended, or shall be construed so as to, create any lien on, or priority hereunder or otherwise with respect to, any taxes levied for purposes other than for the benefit of the Authority.

(f) Fulton shall not make any payment to the Authority with respect to any Subordinate Obligations or otherwise if the sum of (i) the aggregate payments made and to be made by Fulton under subparagraph 4(a) hereof and under the 2012 Contract in the then current sinking fund year, (ii) amounts previously paid, if any, in the then current sinking fund year by Fulton to the Authority under the Operating Contract or any other Subordinate Obligations, and (iii) the payment then proposed to be made under any Subordinate Obligation or otherwise (other than the payments required to be made under subsection (i) above), would exceed an amount equal to the money which would be generated and collected by a levy on all taxable property located within the boundaries of Fulton subject to taxation for such purposes as now existent and as the same may hereafter be extended of an ad valorem tax equal to 7 mills or such greater limitation as may hereafter be authorized by law (assuming that all property in Fulton is valued for such purposes at a value equal to the assessed value of such property for the most recently ended fiscal year of Fulton, as shown on the most recent tax rolls for Fulton which have been submitted to the State Revenue Commissioner), unless, prior to making the proposed payment, Fulton shall have prepaid to the Paying Agent all amounts to be payable under subparagraph (a) of this Section 4 in the then current sinking fund year.

(g) Fulton shall not be obligated under the provisions of this Section 4 to pay from the tax revenues described in Section 4(d) hereof (the "Permitted Tax Revenues") debt service on any Additional Certificates (as defined in the Certificate Resolution) unless (i) the Authority and Fulton shall have entered into an amendment or supplement to this Contract, or a new contract, and such amendment or supplement to this Contract or such new Contract is permitted under the terms of the Certificate Resolution and (ii) the Permitted Tax Revenues, based on the latest taxable digest of property located in Fulton subject to taxation for purposes of the Act, shall be sufficient to enable the Authority to pay (A) the highest Debt Service Requirements for any succeeding Bond Year on the Outstanding Certificates (as those terms are defined in the 2019 Certificate Resolution) and on the Additional Certificates proposed to be issued, plus (B) the annual amounts then due and payable by Fulton under the Subordinate Obligations.

(h) Fulton agrees that within 60 days after the delivery of the Authority's financial statements to Fulton, it will file with the disclosure agent for the Series 2019 Certificates, a copy of Fulton's audited financial statements for the previous fiscal year. Fulton agrees to furnish such additional financial information relating to Fulton as may be reasonably requested in writing by the Authority and the disclosure agent of the Series 2019 Certificates. Fulton agrees to provide such items in an electronic format acceptable to the Purchaser.

(i) If applicable, Fulton hereby covenants and agrees to execute and deliver, and to comply with, a written undertaking (the "Disclosure Agreement") to annually provide certain financial information and operating data in accordance with the provision of Section (b)(5)(i) of Rule 15c2-12, promulgated by the Securities and Exchange Commission, relating to the Series 2019 Certificates. Notwithstanding any other provision of this Contract, failure of Fulton to comply with the Disclosure Agreement shall not be considered a default hereunder and under no circumstances shall such failure affect the validity or the security for the payment of the Series 2019 Certificates. It is expressly provided, however, that any beneficial owner of the Series 2019 Certificates may take such action, to the extent and in such manner as may be allowed by applicable law, as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause Fulton to comply with its obligations under a Disclosure Agreement.

(j) Fulton hereby covenants that prior to issuance of the Series 2019 Certificates it will provide written certification to the Authority and the Purchaser of the 2012 Certificates that based upon the latest taxable digest of property located in Fulton subject to taxation for purposes of the Act, seven (7) mills (or such higher millage as may then be authorized to be levied for purposes of the Act) of property taxes levied on Fulton's digest equals at least 1.1 times the highest Debt Service Requirement for any succeeding Bond Year on the Outstanding Certificates (as those terms are defined in the 2012 Certificate Resolution) and on the Series 2019 Certificates proposed to be issued.

(k) Fulton hereby covenants and agrees it will pay any Redemption Premium (as defined in the Certificate Resolution) upon any redemption (other than a mandatory redemption pursuant to regularly scheduled Sinking Fund Payments as defined in the Certificate Resolution) prior to maturity of the Series 2019 Certificates. Fulton hereby covenants and agrees that it will pay the reasonable fees and expenses of the Fiduciaries (as defined in the Certificate Resolution).

5. *Mutual Obligations.* The parties hereto mutually agree as follows:

(a) Subject to the provisions of subparagraph 3(g) and subparagraph 4(g), as a part of the undertaking contemplated herein, the Authority is under an obligation to meet the principal and interest requirements of the Series 2019 Certificates as same become due and payable on each Interest Payment Date and Principal Payment Date (as such terms are defined in the Certificate Resolution) from the amounts paid by Fulton under this Contract, and the revenues to be derived under this Contract shall be irrevocably pledged to the payment of the principal of and interest on the Series 2019 Certificates to the extent and in the manner to be provided in the Certificate Resolution, to all of which each party does hereby consent; provided, however, should at some later date or dates it be determined advisable to issue additional revenue

certificates or obligations by the Authority ranking as to lien on the revenues of the Authority derived hereunder pari passu with the Series 2019 Certificates and any outstanding 2012 Certificates and a new contract or supplemental agreement to this Contract be entered into by and between the parties hereto to that effect, then the lien herein created on said revenues as security for the payment of the Series 2019 Certificates may be extended and broadened to include the payment of any such certificates or obligations and the principal of and interest thereon.

(b) The term “indigent sick” shall mean such persons living within the boundaries of Fulton that may be certified by the Authority as being entitled to receive the services of the Authority. The medical attention herein referred to is construed to mean the usual care rendered to patients in hospitals, such as food, general nursing care and supervision (but not special nursing care), use of operating room and facilities, laboratories and x-ray facilities, x-ray treatment and use of the usual and customary out-patient clinical services and facilities.

(c) The term “sinking fund year” shall mean the period commencing on the 2nd day of January in each year and extending through the 1st day of January in the next year.

(d) While this Contract is between the parties hereto, it is acknowledged that the owners of the Series 2019 Certificates have an interest herein and shall be third party beneficiaries of this Contract entitled to enforce the provisions hereof as if they were a party hereto. The parties hereto covenant that this Contract cannot be modified or amended, except as provided in the Certificate Resolution.

(e) No covenants, stipulations, obligations or agreements of any member, trustee, director, officer, agent, attorney or employee of the Authority or Fulton shall be deemed to be covenants, stipulations, obligations or agreements of any such member, trustee, director, officer, agent, attorney or employee, past or present, in his individual capacity. No recourse shall be had for the payment of the Series 2019 Certificates or any claim thereon against any member, director, officer, agent, attorney or employee of the Authority or Fulton, past, present or future.

(f) Operation of the Project. The parties acknowledge that Fulton is not obligated to contribute funds for the operation of the Project once construction is completed.

(g) Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(h) Law Governing Contract. The effect and meaning of this Contract and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State of Georgia, without giving effect to any conflict of laws principles thereof.

(i) Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, by nationally recognized overnight courier service or by delivery to physical address, return receipt requested postage or charges prepaid, addressed as follows or by facsimile with receipt confirmed:

If to the Authority: The Fulton-DeKalb Hospital Authority
145 Edgewood Avenue – Second Floor
Atlanta, Georgia 30303
Attention: Shawn Graham, Chief Financial
Officer
(404) 489-1227

with copy to: Arnall Golden Gregory LLP
171 17th Street, Suite 2100
Atlanta, Georgia 30363
Attention: Sandra Z. Zayac
Telephone: (404) 873-8124
Fax: (404) 873-8125

If to Fulton: Department of Finance
141 Pryor Street
Atlanta, Georgia 30303
Attention: Sharon Whitmore, Chief Financial
Officer
(404) 612-7688

with copy to: Office of the County Attorney
141 Pryor Street
Atlanta, Georgia 30303
Attention: Patrise Perkins-Hooker, Esq. County
Attorney
(404) 612-0235

(j) Any amendment or supplements to this Contract shall be in writing and executed by all parties.

(k) Should any phrase, clause, sentence, section or paragraph of this Contract be held invalid or unconstitutional, it shall in nowise affect the remaining provisions, which provisions shall remain in full force and effect.

[Signatures begin on following page]

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have caused this Contract to be executed in duplicate as of the date and year first above written.

FULTON COUNTY

By: _____
ROBERT L. PITTS
Chairman, Fulton County Board of
Commissioners

Attest:

TONYA GRIER
Fulton County Clerk to the Commission

[SEAL]

APPROVED AS TO FORM:

PATRISE PERKINS-HOOKER
County Attorney
Fulton County, Georgia

(Signatures continued on next page)

**THE FULTON-DEKALB HOSPITAL
AUTHORITY**

By: _____
SHARON BENT-HARLEY, M.D.
Chair

Attest:

BERNIE TOKARZ
Secretary

[SEAL]