

RESOLUTION OF THE BOARD OF COMMISSIONERS OF FULTON COUNTY, GEORGIA AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A PONCE DE LEON CONTRACT BETWEEN THE FULTON-DEKALB HOSPITAL AUTHORITY AND FULTON COUNTY, GEORGIA, REGARDING THE RENOVATION OF THE GRADY HEALTH SYSTEM'S INFECTIOUS DISEASE PROGRAM FACILITY LOCATED AT THE PONCE DE LEON CENTER 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 PONCE DE LEON 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 2020 U.S. census was 1,066,710 and the population of DeKalb County pursuant to the 2020 U.S. Census was 764,382; 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 (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 Authority and the County heretofore issued and sold \$66,920,000 in original principal amount of The Fulton-DeKalb Hospital Authority Revenue Certificates (Grady Surgical Center Project), Series 2020A (the “Series 2020A Certificates”) on terms and conditions set forth in a Certificate Resolution adopted on March 31, 2020 (the “2020A Certificate Resolution”) in order to finance 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; and

WHEREAS, the Authority and the County entered into a Contract dated May 7, 2020 (the “2020 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 2020A Certificates; and

WHEREAS, the Operating Contract, the 2012 Contract and the 2020 Contract are authorized under the Act and payable by the County 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 and the 2020 Contract which have 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 renovation of the Grady Health System's infectious disease program facility located at the Ponce de Leon Center at 341 Ponce de Leon Avenue, Atlanta, Georgia (the "Project") and payment of 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 \$35,000,000 of which (a) not more than \$12,000,000 (the "Public Portion") is expected to be paid through (i) the Authority's issuance of one or more series or issues of tax-exempt or taxable revenues certificates (the "Revenue Certificates") and (ii) funds provided by DeKalb and (b) the remainder of such costs is expected to be paid through private philanthropic sources and funds provided by the Corporation; and

WHEREAS, of the Public Portion of the Project Costs, it is proposed that the County support the provision of \$8,000,000 (the "Fulton Net Proceeds") and that DeKalb support the provision of \$4,000,000 (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 \$8,025,000 (the "Series 2021 Certificates"), the Authority and the County desire to enter into a contract (the "Ponce De Leon Contract"), pursuant to which the Authority would agree, among other things, to facilitate the renovation 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 2021 Certificates, which shall include amounts required to pay issuance costs and capitalized interest; and any obligation by the County under the Ponce De Leon Contract, taking into account its obligations under the prior contracts listed herein, will 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 enter into an intergovernmental contract with the Authority (the "DeKalb Contract") for the purpose of making payments to the Authority totaling \$4,000,000 (the "DeKalb Contribution"), and the execution and delivery of the Ponce De Leon Contract by the County will be conditioned on the approval and execution by DeKalb of a resolution approving the DeKalb Contract which shall be in similar form and substance to this resolution and the Ponce De Leon 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 in the amount of at least \$12,000,000 and committed its own funds, which are restricted for use in the renovation of the Project (the "Private Proceeds"), and the Corporation has agreed to be responsible for any Project cost overruns; and

WHEREAS, it is expected that the Authority will adopt a resolution approving its execution, delivery and performance of the Ponce De Leon Contract and the issuance of the Series 2021 Certificates relating to the Project; and

WHEREAS, in conjunction with the issuance of the Series 2021 Certificates the Authority and the Corporation will enter into a Development and Funding Agreement (the “Development Agreement”) which will authorize the renovation of the Project by the Corporation on behalf of the Authority and specify the use of the Fulton Net Proceeds for payment of Project costs; and

WHEREAS, the Ponce De Leon 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 Ponce De Leon 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 2021 Certificates shall be issued in a principal amount not to exceed \$8,025,000, mature not later than January 1, 2051, 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 \$8,586,750. The Chairman and Vice Chair of the Board of Commissioners are each hereby authorized to execute and deliver the Ponce De Leon 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 Ponce De Leon Contract by the Chairman or Vice Chair of the Board of Commissioners shall constitute conclusive evidence that such Ponce De Leon 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 2021 Certificates (i) secure from private sources not less than \$12,000,000 for the renovation of the Project, which may take the form of donations, pledges and other corporate funds secured by the Corporation (including \$8 million which has already been applied to pay renovation costs at 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) has committed its own funds for the purpose of paying for any Project cost overruns; and

BE IT FURTHER RESOLVED that prior to the issuance of the Series 2021 Certificates the Corporation shall provide evidence to Fulton County that it has secured the Private Proceeds in the amount of \$12,000,000 in pledges, donations and corporate funds, and has committed to completing the Project with its own funds; and

BE IT FURTHER RESOLVED that for the purpose of providing funds for payment under the Ponce De Leon 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 Ponce De Leon 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 Ponce De Leon Contract; and

BE IT FURTHER RESOLVED, that the County's participation in the renovation of the Project is subject to and dependent upon the execution of the DeKalb 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 Ponce De Leon 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 Ponce De Leon Contract and the Series 2021 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 2021 Certificates by the Authority is hereby approved; and

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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 _____, 2021.

Robert L. Pitts
Chair, Board of Commissioners of Fulton
County

ATTEST:

Tonya R. Grier
Clerk

APPROVED AS TO FORM:

Kaye Woodard Burwell
Interim County Attorney

EXHIBIT "A"

Ponce De Leon Contract (Fulton)

CLERK'S CERTIFICATE

STATE OF GEORGIA,

FULTON COUNTY

I, Tonya R. 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, at which a quorum was present, duly called and lawfully assembled at __ .m., on the ___ day of _____, 2021, 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 _____, 2021.

Clerk
Board of Commissioners
of Fulton County