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**DEVELOPMENT AND FUNDING AGREEMENT**

by and between

**THE FULTON-DEKALB HOSPITAL AUTHORITY**

and

**GRADY MEMORIAL HOSPITAL CORPORATION**

Dated as of \_\_\_\_\_, 2021

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## DEVELOPMENT AND FUNDING AGREEMENT

This **DEVELOPMENT AND FUNDING AGREEMENT** (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2021 by and between **THE FULTON-DEKALB HOSPITAL AUTHORITY**, a public body corporate and politic (the “**Authority**”), and **GRADY MEMORIAL HOSPITAL CORPORATION**, a Georgia nonprofit corporation (the “**Corporation**”). The Authority and the Corporation are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### WITNESSETH:

**WHEREAS**, pursuant to the provisions of Georgia Laws 1941, pp. 241 *et seq.*, Fulton County, Georgia (“**Fulton County**”) and DeKalb County, Georgia (“**DeKalb County**”) (collectively, 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 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 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 transferred the personal property used in connection with the Grady Health System and leased the real estate portions of the Grady Health System to the Corporation pursuant to a Lease and Transfer Agreement, dated as of April 7, 2008, as amended (the “**Lease**”), which now provides healthcare to residents of the Counties and citizens of the State of Georgia; and

**WHEREAS**, the Parties are entering into this Agreement in connection with a proposed expansion of the Grady Health System by financing and developing the renovation of the Grady Health System’s infectious disease facility (the “**Project**”) located at the Ponce de Leon Center, 341 Ponce de Leon Avenue, Atlanta, Georgia (the “**Project Site**”), which Project is to be owned by the Authority and included as a part of the “Leased Facilities” leased to the Corporation pursuant to the Lease; and

**WHEREAS**, it is estimated that the total cost of the Project will be approximately \$35,000,000, and the Authority and the Corporation envision that the renovation of the Project will be financed by (a) (i) the Authority’s issuance of one or more series of its tax-exempt or taxable revenue certificates to be issued in the aggregate principal amount of \$8,025,000 (the “**Series 2021 Certificates**”), and (ii) \$4,000,000 in funds provided over a two-year period by DeKalb County, and the net proceeds of the Series 2021 Certificates (the proceeds of the Series 2021 Certificates (net of amounts used to pay costs of issuance) in the amount of \$\_\_\_\_\_ (the “**Fulton Contribution**”) and the \$4,000,000 from DeKalb County (the “**DeKalb Contribution**”) together being referred to herein as the “**Public Contribution**”), and (b) the balance of the costs of the Project will be paid by the Corporation from (i) private philanthropic sources in the amount of not

less than \$12,000,000 and (ii) funds provided by the Corporation (collectively, the “**Private Contribution**”); and

**WHEREAS**, pursuant to the Lease, the Authority has retained the right to “to enter into contracts with government agencies to obtain and receive funds and grants from the same for the maintenance and operation of the Leased Facilities, for the provision of medical care and hospitalization for indigent persons and for other public health purposes” and pursuant thereto the Authority will enter into (i) an intergovernmental contract with Fulton County (the “**Fulton Contract**”) under which Fulton County would agree, among other things, to make payments to a paying agent for the Series 2021 Certificates appointed by Fulton County and the Authority in an amount and as and when needed to pay the principal of and interest on the Series 2021 Certificates, and (ii) an intergovernmental contract with DeKalb County (the “**DeKalb Contract**” and together with the Fulton Contract, the “**Contracts**”) under which DeKalb County would agree, among other things, to make eight payments to the Authority in an amount equal to \$500,000 for a total of \$4,000,000 for the purpose of paying its portion of the costs of the renovation of the Project; and

**WHEREAS**, pursuant to the Contracts, the Authority would agree, among other things, to provide or cause to be provided medical services and hospital facilities needed to serve the indigent sick of the Counties; and

**WHEREAS**, the Lease provides that the Corporation, as Lessee (in such capacity, the “Lessee”) shall have the right and responsibility to “perform the Authority’s responsibilities pursuant to all contracts between the Authority and third parties relating to the ownership and operation of the Leased Facilities, to negotiate contracts relating to the operation of the Leased Facilities and to execute the same on behalf of the Lessee or the Authority, to review and analyze the performance of said third parties who provide services and products to the Leased Facilities, to modify, amend or terminate any such contracts in any manner deemed expedient by the Lessee and to take remedial action under such contracts in the event of the occurrence of a breach or default thereunder, and to act on behalf of the Authority or the Lessee based upon what Lessee determines to be in the best interest of the operation of the Leased Facilities; and

**WHEREAS**, in accordance with the foregoing provisions of the Lease, the Corporation, as Lessee, shall be required to provide the indigent care services required to be provided by the Authority under the Contracts with the Counties, and the services must be provided by the Lessee pursuant to the Lease; and

**WHEREAS**, the Lease further provides that the Lessee has the full duty, power, responsibility and authority to “acquire, construct and equip new Improvements consistent with the purposes of the Lessee and the delivery of health care services to the community served by the Authority, the Lessee, and the Leased Facilities” and to “purchase fixtures, equipment, and other personal property deemed by the Lessee to be necessary or desirable for the proper operation of the Leased Facilities”; and

**WHEREAS**, the Corporation has the requisite experience and expertise to renovate the Project in a professional manner and the parties wish to set forth herein certain agreements with respect thereto.

**NOW, THEREFORE**, for and in consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual purposes hereby sought to be achieved, the Authority and the Corporation do hereby agree, as follows:

## ARTICLE I

### TERMS

Section 1.1 Recitals and Premises Part of Agreement. The Corporation and the Authority hereby agree that the foregoing recitals and premises shall constitute a substantive part of this Agreement.

Section 1.2 Definitions. In addition to the terms defined in the recitals hereto, the following terms, as used herein, have the following meanings:

**“A/E Team”** has the meaning set forth in Section 4.4(a) of this Agreement.

**“Applicable Law and Code Requirements”** means any applicable law, statute, code, ordinance, administrative order, implementing order, charter, resolution, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit or license, of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued.

**“Architectural Services Agreement”** means the agreement between the Corporation and the Lead Architect pursuant to which the Lead Architect will be responsible for preparing the Design Documents, as the same may be amended, modified, supplemented or restated.

**“Authority Default”** has the meaning set forth in Section 11.2 of this Agreement.

**“Building Committee”** means the Building Committee created by the Corporation in connection with the renovation of the Project or such other Committee designated by the Corporation as having primary responsibility for the oversight of the Project.

**“Business Day”** means any day other than a Saturday, Sunday or legal or bank holiday in the City. If any time period set forth in this Agreement expires on a day other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

**“Certificate of Substantial Completion”** means the certificate of substantial completion delivered pursuant to the Construction Contract and this Agreement.

**“Change Order”** means a written instrument signed by the Corporation and the General Contractor authorizing a change in scope of the Work, the GMP and/or the date of Substantial Completion.

**“City”** means the City of Atlanta, Georgia.

**“Conceptual Design Documents”** means the conceptual design documents of the Project illustrating, among other things, the block diagram floor layouts, elevations, site plans and such details as required to properly define the scope of work as further described in the Architectural Services Agreement.

**“Construction Contract”** means the general construction contract between the Corporation and the General Contractor, as the same may be amended, modified, supplemented or restated.

**“Construction Schedule”** means the construction schedule or schedules relating to the Work, to be prepared by the General Contractor pursuant to the requirements of the Construction Contract, as such schedules are updated by the Corporation in accordance with the Construction Contract and this Agreement.

**“Corporation Default”** has the meaning set forth in Section 11.1 of this Agreement.

**“Corporation Representative”** means any Person authorized to act on behalf of the Corporation with respect to the design, construction and equipping of the Project and other matters relating to this Agreement or the Project Documents.

**“Default”** means an Authority Default or a Corporation Default.

**“Design Development Documents”** means the documents developed during the design phase of the Project consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and other essential systems as further described in the Architectural Services Agreement.

**“Design Documents”** means the Conceptual Design Documents, the Schematic Design Documents, and the Design Development Documents (as such may be amended from time-to-time consistent with this Agreement and the other Project Documents).

**“Environmental Law”** means all laws as of the date hereof of any Governmental Authority having jurisdiction over the property in question addressing pollution or the protection of human health or the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; and all similar laws (including implementing regulations) of any Governmental Authority having jurisdiction over the assets in question addressing pollution control or protection of human health or the environment.

**“Final Completion”** means that (a) the General Contractor has achieved Substantial Completion and (b) the General Contractor has completed all Work on the punchlist of items requiring correction or completion created pursuant to the General Conditions of the Construction Contract.

**“Force Majeure”** means any event, circumstance or condition that is beyond the affected Party’s reasonable control, including, without limitation, acts of God, hurricane, tornado, rain, flood, sinkhole, wind, hail, lightning, earthquake, snow or ice, extreme high or low temperatures, water or gas main break, cable cut, fire, explosion, riot, terrorist act, military action, government-imposed moratorium on construction or delays in the issuance of required permits, licenses or other governmental approvals, or any other act or failure to act on the part of a governmental authority or third party (except for a third party that is an affiliate of the affected Party), strike, lockout,



boycott or other labor problem, transportation or shipment delays, unavailability of fuel, supplies or materials, or change in or in the interpretation of any law or regulation, or the encounter of any unusual site conditions.

**“General Contractor”** means an experienced construction firm capable of performing and bonding the Work for the Project that is retained by the Corporation.

**“GMP”** has the meaning set forth in Section 4.5 of this Agreement.

**“Governmental Authority”** means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction over either of the Parties or the Project.

**“Hazardous Material”** means (a) any hazardous materials, hazardous wastes, hazardous substances, toxic wastes and toxic substances as those or similar terms are defined under any Environmental Laws, (b) asbestos, (c) PCBs, (d) any other hazardous, radioactive or toxic substance, material, pollutant or contaminant regulated under any Environmental Law and (e) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof.

**“Issuance Costs”** means the legal fees and disbursements described in subsection (e) of Section 6.1, the fees and disbursements of any underwriters or financial advisers and any and all other normal and customary fees and expenses paid or payable in connection with the issuance of the Series 2021 Certificates.

**“Laws”** means all federal, state, local, municipal or foreign (including supranational) laws (including common law), statutes, rules, regulations, ordinances, directives, regulations, judgments, orders, injunctions, decrees, court decisions, arbitration awards or agency requirements of any Governmental Authority having or asserting jurisdiction over the Project, or the Parties or any of their assets, and other pronouncements having the effect of law of any Governmental Authority, including without limitation, “Applicable Law and Code Requirements” and “Environmental Laws.”

**“Lead Architect”** means such architectural firm that is retained by the Corporation as the principal architect for the Project.

**“Lease”** means that certain Lease and Transfer Agreement, dated as of April 7, 2008, as same has been, and may in the future be, amended, modified, supplemented and restated in accordance with the provisions thereof.

**“Leased Facilities”** shall have the meaning given such phrase in the Lease.

**“Lien”** means any encumbrance, lien, claim of lien, mortgage, deed of trust, security deed, security interest, pledge, easement, tenancy, license, right-of-way, covenant, condition, restriction or other claim in, to, against or in any way applicable to any portion of the Project including without limitation mechanic’s or materialmen’s liens.

**“Payment Certificate”** means the certificate to be signed by the Lead Architect or the Project Manager in form attached to the Requisition and provided to the Project Fund Custodian in connection with each Requisition.

**“Permitted Exceptions”** means the title exceptions with respect to the Project Site listed on the title insurance policies.

**“Person”** means any natural person, firm, partnership, association, corporation, limited liability company, trust, public body, authority, governmental unit or other entity.

**“Private Contribution”** shall have the meaning given such term in the recitals hereto.

**“Project”** means the renovation of the Grady Health System infectious disease facility located at the Ponce de Leon Center at 341 Ponce de Leon Avenue, Atlanta, Georgia.

**“Project Budget”** has the meaning set forth in Section 4.5 of this Agreement.

**“Project Costs”** means the estimated costs of renovating the Project totaling \$35 million and include those costs which are set forth in Section 6.1 of this Agreement.

**“Project Cost Overruns”** has the meaning set forth in Section 7.6 of this Agreement.

**“Project Documents”** means this Agreement and the documents, agreements and instruments, to be entered into pursuant to this Agreement by the Corporation, or to be created for purposes of this Agreement by a third party pursuant to this Agreement.

**“Project Equipment”** means the furniture, fixtures, machinery, equipment and other personal property to be acquired and installed as part of the Project.

**“Project Fund”** means the Project Fund which shall be held and administered by the Project Fund Custodian under the Project Fund Custodian Agreement and used to pay Project Costs based on the Requisitions submitted by the Corporation.

**“Project Fund Custodian”** means the bank or trust company named to serve as the Project Fund Custodian under the Project Fund Custodian Agreement, and any successor thereto.

**“Project Fund Custodian Agreement”** means the Project Fund Custodian Agreement among the Project Fund Custodian, the Authority and the Corporation and under which the Project Fund shall be administered for the purpose of paying Project Costs, as the same may be amended, modified, supplemented or restated.

**“Project Manager”** means the construction consultant retained by the Corporation to manage and coordinate the Work.

**“Project Site”** has the meaning set forth in Section 3.1(a) of this Agreement.

**“Public Contribution”** shall have the meaning given such term in the recitals hereto.

**“Requisition”** means a payment requisition to be prepared and submitted by the Corporation to the Project Fund Custodian pursuant to this Agreement and the Project Fund Custodian Agreement for the purpose of paying Project Costs. The form of such Requisition is attached hereto as Exhibit B.

**“Responsible Officer”** means a Person so designated or authorized to act on behalf of or bind an entity, including but not limited to (i) in the case of the Corporation, the Chief Executive Officer or any vice president of the Corporation and (ii) in the case of the Authority, its Chair, Vice Chair, or Chief Executive Officer. The Corporation and the Authority shall appoint their respective Responsible Officers and provide written notice thereof to the Project Fund Custodian, along with the specimen signature of each such Responsible Officer. The Corporation and the Authority may change their respective Responsible Officer or Officers by providing a subsequent written notice to the Project Fund Custodian in the form required above.

**“Schematic Design Documents”** means the schematic design documents of the Project illustrating, among other things, the scale and relationship of the components thereof which also contain square footage for the building interior spaces, building exterior spaces (including plazas, balconies, decks and other similar components), as well as major architectural and interior finishes, as further described in the Architectural Services Agreement.

**“Series 2021 Certificates”** shall have the meaning given such term in the recitals hereto.

**“State”** means the State of Georgia.

**“Substantial Completion”** means the stage in the progress of the Work when the Project, or designated portion thereof is sufficiently complete in accordance with the Construction Contract so that it can be occupied or utilized for its intended use. Without limitation of the foregoing, the Work or any designated portion thereof will not be considered Substantially Complete until all systems and equipment included in the Project are safely operational and commissioned as designed and all designated or required governmental approvals and certifications (including, but not limited to, all applicable certificates of occupancy) for the Work have been made and posted. It shall also be a requirement of Substantial Completion of the Project that the Certificate of Substantial Completion be submitted to and accepted by the Corporation, a copy of which shall be provided to the Authority.

**“Substantial Completion Date”** has the meaning set forth in Section 5.6(a) of this Agreement.

**“Work”** means all work to be performed pursuant to the Construction Contract to construct the Project in accordance with this Agreement.

## ARTICLE II

### PROJECT DEVELOPMENT AND FUNDING

#### Section 2.1 Development of the Project.

(a) The Corporation shall have overall responsibility for the development and renovation of the Project and shall, among other things, have the sole right and obligation to (i) select and retain the Lead Architect and enter into the Architectural Services Agreement with the Lead Architect for the purpose of preparing the Design Documents for the Project, (ii) select and retain the Contractor and enter into the Construction Agreement, and (iii) select and retain the Project Manager and enter into the related agreement.

(b) The Corporation agrees to comply with the Georgia Local Government Public Works Construction Law to the extent applicable to the Project and to use a competitive procurement process in connection with the selection of the General Contractor, the Lead Architect and the Program Manager. The Corporation may request that the Authority cooperate in taking such actions as the Corporation deems reasonably necessary or advisable in order to assist the Corporation in that regard and such cooperation shall not be unreasonably withheld; provided that the Corporation shall indemnify and hold the Authority harmless against and from all costs and expenses which may be incurred by the Authority in connection with any such request, all of which shall be deemed to be Project Costs.

(c) The Corporation hereby agrees to provide such information that the Authority may reasonably request regarding the qualifications and selection of the General Contractor, the Lead Architect and the Project Manager (collectively, the “**Project Contractors**” and each individually a “**Project Contractor**”) at least ten (10) days prior to entering into any contract with the Project Contractors in order to allow the Authority to provide feedback on the selection of the Project Contractors. The Corporation agrees to address any reasonable concerns raised by the Authority regarding the Project Contractors. The Corporation also agrees not to engage any Project Contractor or subcontractor that has an active lawsuit against the Authority, Fulton County or DeKalb County.

Section 2.2 Project Funding. Subject to the terms and conditions set forth in this Agreement and the other Project Documents, the respective funding commitments of the Parties for the Project will be funded from the sources and in the manner provided in Articles VI and VII hereof.

### ARTICLE III

#### THE PROJECT SITE

##### Section 3.1 Project Site.

(a) The Project is located on the land identified on Exhibit A (the “**Project Site**”).

(b) If applicable, the Corporation will (i) obtain appropriate soils and materials testing with respect to the Project Site using certified independent laboratories which may be relied upon by the Corporation, the Lead Architect and the General Contractor, (ii) furnish to the Authority upon request copies of soils and other geotechnical reports obtained by the Corporation and (iii) cause the entities which have rendered such reports to address same to and for the benefit and reliance of the Authority, at no cost to the Authority.

Section 3.2 Site Conditions; Environmental Remediation. The Corporation agrees to indemnify and hold the Authority harmless against all claims against the Authority as a result of any hazardous site condition, including environmental conditions caused by or exacerbated by the Corporation during the renovation of the Project. The Corporation will have an obligation to

remediate same which shall survive the termination of this Agreement and shall obligate the Corporation to complete all required remediation activities.

Section 3.3 [Reserved].

Section 3.4 Abandonment of Easements and Rights of Way.

(a) The Corporation will commence and shall diligently pursue the acquisition of all consents and approvals of all Governmental Authorities having jurisdiction and other third parties, such as utility service providers, necessary or required for the purpose of abandoning or relocating any easements and other rights of way located within the Project Site which would interfere with the development, renovation, location, use or operation of the Project. The expenses incurred in connection with the abandonment or relocation of easements or other rights of way and the approval, including the work necessary for such approval and recordation, shall be included as a Project Cost.

(b) The Authority agrees to provide to the Corporation its full cooperation in connection with the acquisition of such consents and approvals for the purpose of obtaining the abandonment or relocation of such easements and other rights of way, including, at the request of the Corporation, the execution and filing of any applications, submissions or other documents and the appearing at meetings, staff conferences, public hearings and such other events with third parties, such as utility service providers and the City, the Counties, the State and the United States, and their respective agencies, departments, boards and commissions. All costs incurred by the Authority in connection therewith shall be deemed Project Costs.

Section 3.5 Easements. The Corporation shall obtain on behalf of the Authority any easements from third parties that are reasonably necessary to complete the development and renovation of the Project and to permit the Corporation and its contractors, consultants and professional advisors to perform their respective obligations under this Agreement and the related Project Documents; and the Authority agrees to cooperate with the Corporation in obtaining such easements.

Section 3.6 Project as Leased Facilities. The parties hereby acknowledge and agree that title to the Project Site, the Project and any and all related easements, rights of way, access rights and other related rights shall automatically, and without further action or documentation, be held by the Authority and included as a part of the Leased Facilities which are subject to the Lease. The parties hereby further acknowledge and agree that title to the Project Site is already held in the name of the Authority and the renovation and any improvements thereto shall be included as a part of the Leased Facilities which are subject to the Lease. Notwithstanding the foregoing, the Parties agree to enter into an amendment to the Lease pursuant to which the legal description of the Project Site will be added to Exhibit "A" (Real Property) to the Lease, and Exhibit "I" (Real Estate Summary) will be revised to include the Project. Except as specifically otherwise provided herein, the respective rights, powers and duties of the parties with respect to the Project and the Project Site as Leased Facilities shall be as specified in the Lease and shall include, without limitation, the insurance requirements described in Article 9 of the Lease and the indemnification obligations of the Corporation under Section 10.01 of the Lease.

## ARTICLE IV

### DESIGN AND DEVELOPMENT

Section 4.1 Project Documents. Subject to the terms of this Agreement and the other Project Documents, the Corporation will serve as the developer of the Project, with overall responsibility for the design, renovation, equipping and development of the Project. The Corporation will enter into the Architectural Services Agreement with the Lead Architect and enter into the Construction Contract with the General Contractor in accordance with and subject to the provisions of Section 2.1(c) hereof. The Corporation will enter into such additional agreements with other entities as it deems are necessary or convenient for the planning, design, engineering, renovation and equipping of the Project (to the extent agreements with such entities are not subcontracts of the agreement with the Lead Architect or General Contractor).

Section 4.2 Prosecution of the Work for the Project. Except as otherwise provided in this Agreement, the Corporation shall at all times use its commercially reasonable efforts to promptly and faithfully cause the architectural and engineering design team (the “**A/E Team**”) or the Project Manager hired for such purpose, to monitor the Work for the Project which is to be performed under the Construction Contract. The Corporation may waive, excuse, condone, release or discharge a Person under the Construction Contract or other applicable construction agreements of or from its obligations, covenants or agreements to be done or performed under the Construction Contract or other applicable construction agreements and approve any Change Orders in connection with the Work. The Corporation will use commercially reasonable efforts to cause the Construction Contractor to meet the milestones set forth in the Construction Schedule necessary to achieve Substantial Completion by the Substantial Completion Date in accordance with the Construction Contract, as the same may be changed pursuant to a Change Order.

Section 4.3 Design; Approval Rights. The Corporation will have exclusive approval rights with respect to the Conceptual Design Documents, the Schematic Design Documents and the Design Development Documents.

Section 4.4 Lead Architect and Architectural Services Agreement. The Corporation will require that Design Documents specify that the structural elements of the Project shall be engineered in accordance with generally accepted engineering practices. The Authority will not be responsible for any fees or expenses incurred from the Lead Architect or any member of the A/E Team engaged by the Lead Architect in connection with architectural or engineering services for the Project. All such costs shall be included in the Project Budget and paid as Project Costs.

Section 4.5 Project Budget and GMP Drawings and Specifications. As soon as practicable after the Corporation approves the Design Documents and the Construction Contract, which shall include a guaranteed maximum price of the Project (“**GMP**”), and has determined all other applicable Project Costs, the Corporation shall prepare a budget of all Project Costs (the “**Initial Project Budget**”). A copy of the Initial Project Budget shall be delivered to the Authority. The Authority and the Corporation currently estimate that the Project Costs will equal \$35 million which shall be included in the Initial Project Budget and of which approximately \$8 million has been spent by the Corporation for renovation costs of the Project. The Initial Project Budget, as the same may be subsequently adjusted by means of approved Change Orders or otherwise, is herein called the “**Project Budget**”.

Section 4.6 Permits, Licenses and Approvals. The Corporation will obtain, or cause to be obtained through the contracts with the Lead Architect, A/E Team and/or General Contractor the permits, licenses and approvals required in connection with the construction of the Project and other permits or approvals (if any) issued by other governmental agencies, to the extent required by Law. The Corporation may obtain such permits, licenses and approvals in its name or in the name of the General Contractor or any member of the A/E Team. At the request of the Corporation, the Authority shall file such applications, submissions or other documents, attend such hearings and meetings and otherwise cooperate with the Corporation in order to secure such permits and authorizations as the Corporation deems necessary or advisable in connection with the development, acquisition, construction and equipping of the Project, provided that Corporation shall indemnify and hold the Authority harmless against and from all costs and expenses which may be incurred by the Authority in connection with any such request which shall be deemed to be Project Costs.

## ARTICLE V

### CONSTRUCTION

#### Section 5.1 Construction Contract.

(a) The Corporation shall select the General Contractor for the Project and enter into a construction contract with respect to the Work which shall contain a GMP and the requirements set forth in subsection (b) below (the “**Construction Contract**”).

(b) The Corporation has the sole right and responsibility to engage designers, engineers, contractors and project managers, as appropriate, to manage, direct, supervise, coordinate and control the planning, design and construction of the Project. Subject to the Construction Contract, the Corporation will use commercially reasonable efforts to monitor or cause the Lead Architect, the other members of the A/E Team and/or the Project Manager to monitor the General Contractor in order to ensure that the Project is constructed in accordance with Applicable Law and Code Requirements and, as applicable, the Design Documents. In addition, the Construction Contract shall include all of the following requirements which are hereby agreed to by the Corporation and the Authority:

(i) a provision that requires the General Contractor to provide a GMP or a lump sum prior to commencing any portion of construction;

(ii) a required Substantial Completion Date (such date as so extended, the “**Substantial Completion Date**”), with liquidated damages for failure to achieve Substantial Completion on or before the required deadline;

(iii) a provision that the Authority is an express third party beneficiary thereunder, provided that the Authority may not enforce its rights under the Construction Contract if the Corporation is diligently enforcing same;

(iv) a provision that gives the Authority step-in rights in the event the Corporation materially breaches under the Construction Contract and fails to cure such default in accordance therewith;

(v) a provision that requires the General Contractor to prepare and update, or cause to be prepared and updated, the Construction Schedule;

(vi) a provision that requires the General Contractor to retain and supervise the personnel reasonably necessary in order to properly perform or cause to be performed the Work;

(vii) a provision that requires the General Contractor to maintain, or cause to be maintained, complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Project, including the Design Documents, shop drawings, Change Orders, as-built drawings, applications for payment, permits, insurance policies, bills, vouchers, receipts, lien waivers, customary periodic reports, estimates, correspondence and bid calculation sheets;

(viii) a provision that requires the General Contractor to take all action reasonably required to comply with all Applicable Law and Code Requirements relating to the construction of the Project;

(ix) a provision that requires the General Contractor to coordinate the Work and grant appropriate access to the Project for subcontractors performing the Work; and

(x) a provision which requires the General Contractor to meet applicable MBE and DBE requirements.

Section 5.2 Requisitions and Change Orders. The Corporation shall have the sole and exclusive right to prepare and submit all Requisitions and to approve any and all Change Orders for the Project. The Corporation shall submit copies of all Requisitions (including relevant invoices) that call for payments from the Project Fund to the Authority for the Authority's signature, which signature will be provided within ten (10) days of receipt. The Authority shall have the right to (i) review all Requisitions (including relevant invoices) for the purpose of confirming that such have been signed by a Responsible Officer of the Corporation, that any required certification by the Lead Architect or the Project Manager with respect to the Work has been provided and signed, and that the Requisition does not reflect any fraudulent payments or payments with respect to Work that is substantially inconsistent with then existing Design Development Documents, and (ii) raise any reasonable concerns with respect to the issues described in (i) above either before or after payment of such Requisition (a "**Disputed Requisition**"). It is not the intent of this provision that the Authority repeat or replace the reviews of the Requisitions previously performed. The parties shall undertake to resolve any Disputed Requisition immediately after the Corporation is notified thereof; provided, however, final resolution of any such Disputed Requisition shall not be a condition to the submission and payment thereof. If the parties cannot resolve the concerns of the Authority with respect to a Disputed Requisition, either party may submit such to the Building Committee for resolution. If either party disagrees with the decision of the Building Committee with respect to any Disputed Requisition, such party may file for binding arbitration pursuant to Section 14.28 hereof. The parties hereto agree that upon the final resolution of any Disputed Requisition, such Requisition shall either be revised to reflect such resolution prior to being submitted for payment, or, if previously paid, the Corporation shall deposit or cause to be deposited funds in the Project Fund equal to the amount



that was determined to have been incorrectly paid from that Fund. The Corporation shall be responsible for the completion of the Project in accordance with the Project Budget, and shall pay any Project Cost Overruns, if the Public Contribution and the Private Contribution are not available for such purpose. In addition, the Corporation shall provide commercial crime insurance policies, one for the Authority and one for the Corporation, each covering fraud, embezzlement, forgery, misrepresentation, robbery and theft as more fully described in Section 9.1.

Section 5.3 Reports. The Corporation shall provide to the Authority monthly copies of all Change Orders which have not previously been provided to the Authority. In addition the Corporation shall submit to the Authority when and as needed drafts of any contracts, agreements, easements or other documents expected to be entered into by the Authority and any applications projected to be filed in the name of the Authority that may be necessary or, in the opinion of the Corporation, desirable in connection with the Project (collectively, the “**Authority Contracts**”). The Corporation agrees to provide copies of any such proposed Authority Contracts to the Authority at least ten (10) days prior to the execution or filing thereof. In order to avoid construction delays, the Authority agrees to promptly review such Authority Contracts and contact the Corporation with any concerns in connection therewith. The Corporation will also make quarterly presentations to the Authority’s Compliance Committee regarding construction status, the Project Schedule and the Project Budget, and shall include in such presentations a report on the minority and DBE utilization in connection with the Project. The Corporation will notify the Authority within thirty (30) days of any lawsuits filed against the Corporation, the Project or, to the knowledge of the Corporation, any of the Project Contractors with respect to the Work. This Section 5.3 shall not limit any rights of the Authority under Section 5.22 of the Lease relating to the Leased Facilities, including the Project.

Section 5.4 Completion Dates.

(a) Substantial Completion Date. The Corporation shall monitor the Work and use commercially reasonable efforts in order to cause Substantial Completion to occur on or before the Substantial Completion Date as the same may be extended for Force Majeure or Change Orders approved by the Corporation. Upon the Substantial Completion of the Project, the Corporation shall cause to be delivered to the Authority the Certificate of Substantial Completion, which has been executed by the Lead Architect or the Project Manager, certifying that Substantial Completion has been achieved.

(b) Final Completion. On or before the date which is one hundred and eighty (180) days after the Substantial Completion Date, the Corporation shall use commercially reasonable efforts to cause Final Completion to occur and deliver to the Authority a written certification executed by a Responsible Officer of the Corporation, certifying that Final Completion has been achieved.

Section 5.5 Liquidated Damages. The Corporation shall diligently in good faith by appropriate proceedings attempt to collect any liquidated damages payable by the General Contractor and/or any other construction contractor or their respective insurers to which the Corporation may be entitled under the Construction Contract or other construction agreements for the Project, as applicable. If the Corporation collects any liquidated damages from the General Contractor pursuant to the Construction Contract for a delay in achieving Substantial Completion, then the Corporation will promptly deposit such funds in the Project Fund. The Authority shall have no right or obligation whatsoever to enforce the Construction Contract or other construction

agreements, as applicable, unless and until the Authority's Step-In Rights have been triggered. The Corporation covenants that the provisions of this Section 5.5 and the Corporation's obligations with respect to any such liquidated damages accruing prior to the date of termination hereof shall survive any expiration or earlier termination of this Agreement.

Section 5.6 Compliance with Minority Business Enterprise Policies. The Authority and the Corporation are committed to non-discrimination in purchasing, contracting and utilization of minority business enterprises ("MBE"). The Corporation agrees to comply with the policies of the Authority, Fulton County and DeKalb County to make a good faith effort to utilize at least 20% Minority Business Enterprises ("**MBE Policies**") in the construction, equipping and development of the Project (the "**Project MBE Goal**"). If not already engaged as of the date of this Agreement, the Corporation shall include in its contracts with the A/E Team, General Contractor and Program Manager requirements that such parties comply with the MBE Policies and to require that their subcontractors comply with the MBE Policies to the extent necessary to satisfy the overall Project MBE Goal, recognizing that not all subcontractors will qualify as a MBE. The Corporation will provide quarterly reports to the Authority regarding compliance with the MBE Policies during the construction period. The Corporation agrees to designate a Corporation representative to monitor MBE participation. The Corporation shall provide the name and contact information of that representative to the Authority.

## ARTICLE VI

### PROJECT COSTS

#### Section 6.1 Project Costs.

(a) The Project Costs will consist of:

(i) All soft costs associated with renovation and development of the Project (including, without limitation, all architectural, engineering, soil testing and related professional services, and the costs relating to securing all required permits, licenses and inspection fees);

(ii) Project infrastructure on the Project Site;

(iii) Project Site utilities;

(iv) Any contiguous surface parking and/or parking garage for the Project on the Project Site;

(v) Any plazas constructed as part of the Project on the Project Site;

(vi) Relocation of power lines and other utilities on the Project Site (if necessary);

(vii) All environmental remediation expenses, including, but not limited to, onsite contaminated soil remediation for Project Site preparation (if necessary);

(viii) All third-party legal, consulting and other professional fees incurred by the Corporation in connection with the Project, including, without limitation the fees and expenses of the Architect and other members of the A/E Team, the General Contractor and other contractors, and the Project Manager;

(ix) All necessary due diligence expenses to be performed and incurred by the Corporation related to the Project Site, including, without limitation, all environmental, soil and subsurface assessments, the costs of obtaining any required easements or other similar rights, the costs of owner's and lessee's title insurance, transportation studies, legal fees, potential infrastructure and other pre-development costs, utilities, parking, signage, etc.;

(x) The Project Equipment; and

(xi) Any and all other costs and expenses required in the reasonable judgment of the Corporation for full and timely acquisition, development, construction and equipping of the Project, including any out of pocket costs and expenses incurred by the Authority at the request of the Corporation and any costs and expenses of the Project Fund Custodian related to the Project Fund Custodian Agreement and the Series 2021 Certificates.

(b) All Project Cost Overruns shall be paid as provided in Section 7.6.

(c) The Corporation shall not be paid any development fee for the performance of its duties under this Agreement and the Project Costs will not include any expenses of the Authority that are not specifically approved in advance by the Corporation.

(d) The Corporation and the Authority agree that there may be offsite infrastructure costs associated with the Project which are not Project Costs. The Authority will not assume responsibility for such offsite infrastructure costs; provided, however, that to the extent permitted by Law, the Authority shall cooperate reasonably with the Corporation in pursuing other possible funding sources with respect to such offsite infrastructure as may be required by applicable law and public safety and welfare considerations and/or requirements.

(e) All legal fees and disbursements of (i) Arnall Golden Gregory LLP, as Co-Bond Counsel and Authority's counsel, (ii) Seyfarth Shaw LLP, as Co-Bond Counsel, (iii) McGuireWoods LLP, as counsel to the County, (iv) \_\_\_\_\_, as disclosure counsel to the County, and (v) Holland & Knight LLP, as counsel to the purchaser of the Series 2021 Certificates shall be paid with the proceeds of the sale of the Series 2021 Certificates. The fees and disbursements of the Authority's Financial Advisor, Terminus Municipal Advisors LLC, the Project Fund Custodian and the Paying Agent for the Series 2021 Certificates shall be paid with the proceeds of the Series 2021 Certificates. Notwithstanding the foregoing, (A) nothing herein shall prohibit the Authority from paying any of such fees and disbursements prior to the issuance of the Series 2021 Certificates and (B) if the Series 2021 Certificates are not issued prior to the termination of this Agreement for reasons not attributable to the default by the Authority hereunder or its bad faith or gross negligence, the Corporation shall, promptly upon being invoiced therefor, pay all such fees and disbursements actually incurred through such date in connection with the

preparation of this Agreement, the Fulton Contract and the Series 2021 Certificates (or reimburse the Authority for prior payment thereof), subject to a limit of \$175,000. Any amounts so paid by the Authority or the Corporation shall be subject to reimbursement from proceeds of the Series 2021 Certificates if and when they are subsequently issued subject to any limitations applicable to tax-exempt obligations.

## ARTICLE VII

### FINANCING THE PROJECT

Section 7.1 Certain Agreements Regarding the Private Contribution. The Contracts will set forth the agreements (in addition to this Agreement) that the Counties and the Authority contemplate will be entered into in connection with the Series 2021 Certificates and the funding of the Project. As of the date of this Agreement, the Corporation has raised funds or committed its own funds in the amount of \$12,000,000, 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. Information regarding such commitments and pledges (other than the identity of any donor who wishes to remain anonymous) shall be provided to the Authority in writing upon its request.

#### Section 7.2 Project Fund.

(a) On or prior to the date of issuance of the Series 2021 Certificates, there shall be established with the Project Fund Custodian under the Project Fund Custodian Agreement a separate fund designated as the “**Project Fund**” into which the net proceeds from the sale of the Series 2021 Certificates will be deposited and out of which Project Costs will be paid pursuant to Section 7.3 below. In no event shall the net proceeds from the sale of the Series 2021 Certificates (after payment of all Issuance Costs) to be deposited in the Project Fund (after payment of all Issuance Costs) be less than \$\_\_\_\_\_.

(b) The Project Fund will be established pursuant to the Certificate Resolution and governed by the terms of the Project Fund Custodian Agreement. The Authority acknowledges that the funds in the Project Fund will be dedicated solely to the payment of Project Costs, and following Final Completion of the Project and payment of all Project Costs, any remaining funds on deposit in the Project Fund shall be used to pay debt service on the Series 2021 Certificates, unless used for such other purposes approved by Bond Counsel. The Parties acknowledge that the Project Fund will be held as a trust account by the Project Fund Custodian and will be dedicated solely to the payment of Project Costs. The Project Fund will not be commingled with any other Authority or Corporation funds or accounts. Pending disbursement of funds in the Project Fund, such funds shall be invested only as permitted under O.C.G.A. § 36-82-7 and authorized by applicable law. All income earned on such the investment of funds in the Project Fund shall be deposited in and deemed a part of the Project Fund.

#### Section 7.3 Disbursements to Pay Project Costs.

(a) Funds will be disbursed from the Project Fund by the Project Fund Custodian for the purpose of paying Project Costs in accordance with this Section 7.3.

(b) The amount required to pay any Requisition for Project Costs (the “**Requisition Amount**”) shall be disbursed from the Project Fund.

(c) Funds shall be disbursed from the Project Fund to pay each Project Cost only upon provision by the Corporation of a Requisition authorizing such payment in the form substantially attached hereto as Exhibit B. As a condition to the funding of any Requisition for the Work, the Lead Architect or the Project Manager shall execute and deliver the payment certificate in the form which is attached to the Requisition (the “**Payment Certificate**”).

Section 7.4 Project Cost Overruns. If any Project Costs are incurred after the funds in the Project Fund and amounts provided by DeKalb are completely depleted (the “**Project Cost Overruns**”), the Corporation will be solely responsible for and will promptly pay or arrange for additional amounts from any available sources to fund such Project Cost Overruns. Such Project Cost Overruns may include, without limitation, any shortfalls in insurance policy coverages and insurance deductibles which exceed available contingency or other monies in the Project Budget or the Project Fund.

Section 7.5 Rights to Audit. The Corporation and the Authority will each have the right to audit, upon reasonable prior notice and at its own expense, all expenditures and financial records related to the construction and development of the Project, including the records related to the Project Fund. Without limiting the foregoing, the Project Fund Custodian Agreement shall provide that the Project Fund Custodian shall prepare and send to both the Corporation and the Authority monthly statements of account regarding the Project Fund until the Project is completed and all funds in the Project Fund have been spent. The Authority and the Corporation will reasonably cooperate with the assigned auditors (internal or external), if any, in this regard, and will retain and maintain all such records for the time period(s) of time required by applicable law.

## ARTICLE VIII

### COMPENSATION

Section 8.1 No Development Fee; Reimbursement of Expenses. Neither the Corporation nor the Authority shall receive any compensation or reimbursement for or related to its services hereunder; provided, however, the Corporation may be reimbursed for any expenses constituting Project Costs which have been advanced by the Corporation in connection with the acquisition and development of the Project and the Authority may be reimbursed for any expenses incurred at the specific written request of the Corporation in connection with the Project.

## ARTICLE IX

### INSURANCE; CASUALTY

Section 9.1 Insurance Requirements. The Corporation shall purchase and maintain, or cause the Lead Architect, General Contractor and/or subcontractors (as set forth below) to purchase and maintain, the following insurance policies (the “**Insurance Policies**”):

(a) Builder’s Risk Insurance. Builder’s risk insurance for direct physical loss or damage resulting from an insured peril to the building, structures and other improvements comprising all or part of the Project, including materials and equipment that

are intended for incorporation into the Project, including temporary structures (e.g., including but not limited to, formwork, falsework, scaffolding) any material and/or labor provided by the Corporation, or others for incorporation in renovation of the Project, whether located at the Project, in storage, or in transit. The policy shall include coverage for (i) all risks of physical loss or damage and be written on an “all risk” or equivalent policy form; (ii) the Authority’s loss of income or incurrence of soft costs from any delay in the opening of the Project which is the result of a covered peril, for a minimum delay in opening period of twenty-four (24) months or as ultimately deemed appropriate by the Corporation; (iii) resultant damage from faulty design, materials, to the extent it is available at commercially reasonable rates; and (iv) mechanical breakdown and testing of all building machinery and equipment until acceptance of the Project. Policy limits shall be equal to the replacement cost of the Project plus the amount of delay in opening and soft cost coverage values. Deductible shall not be greater than \$100,000 per occurrence. Delay in opening waiting period shall not be greater than thirty (30) days. Policy shall be non-cancelable by insurers except for non-payment of premium. The builder’s risk insurance shall include contractors of all tiers as additional insureds.

(b) Professional Liability Insurance. Professional liability insurance for losses that arise out of the professional services of the Lead Architect and other professionals working on the Project. Policy limits for the Lead Architect shall be at least \$5,000,000 per claim/annual aggregate. The Corporation will procure Owners Protective Professional Insurance with minimum limits of at least \$10,000,000 each claim/annual aggregate, if available at commercially reasonable rates. Should limits of \$10,000,000 not be available or commercially reasonable, a lower limit to be determined may be acceptable. The Corporation will also require the General Contractor to maintain Contractor’s Protective Professional Indemnity (“CPPI”) coverage, or the equivalent, with limits of at least \$5,000,000 per claim/annual aggregate.

(c) Workers’ Compensation. Workers’ compensation insurance meeting the statutory requirements of the State and Employer’s Liability with limits of not less than \$1,000,000 (per accident for bodily injury by accident) / \$1,000,000 (policy limit for bodily injury by disease) / \$1,000,000 (per employee for bodily injury by disease). The required coverage will apply to construction operations performed at the Project Site by eligible, enrolled contractors, as defined in the Controlled Insurance Program (“CIP”) manual. Workers Compensation coverage for construction activities performed away from the Project Site will be the responsibility of the individual contractors participating in the Project and subject to the same statutory coverage and Employer’s Liability limits required above. Contractors ineligible for the CIP will be responsible for their own Worker’s Compensation coverage, whether working on-site or away from the Project Site and subject to the same statutory coverage and Employer’s Liability requirements provided above.

(d) General Liability. Commercial general liability insurance coverage for third party bodily injury or property damage claims arising out of services performed by the Corporation, the General Contractor or the Lead Architect with limits of \$2,000,000 (\$1,000,000 for the Lead Architect and subcontractors) per occurrence and \$4,000,000 (\$2,000,000 for the Lead Architect and subcontractors) General and Products Completed Operations Aggregate dedicated to the Project to the extent that such services are covered by the developer-controlled or contractor-controlled insurance program contemplated below. The completed operations coverage under the commercial general liability

insurance shall continue for a period commensurate with the Georgia Statute of Repose (in effect as of the date of this Agreement), commencing after the Substantial Completion Date. The required coverage will apply to construction operations performed at the Project Site by eligible, enrolled contractors, both as defined in the Controlled Insurance Program (CIP) manual. General liability coverage for construction activities performed away from the Project Site will be the responsibility of the individual contractors participating in the Project and subject to the same limits required above. Contractors that are ineligible or not enrolled in the CIP will be responsible for their own General Liability coverage, whether working on-site or away from the Project Site and subject to the same coverage requirements provided above. The coverage must be maintained for at least five (5) years following the completion of the Work. The General Contractor shall require a final ACORD certificate to be submitted by all subcontractors with their final pay requisition. The policies will meet the additional insured requirements stipulated in Section 9.2(a) below.

(e) Business Automobile Liability. Business automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$1,000,000 combined single limit.

(f) Umbrella/Excess Liability. Umbrella or excess liability insurance and General and Products Completed Operations Aggregate with limits of at least \$100,000,000 (\$5,000,000 for the Lead Architect) per occurrence dedicated to the Project. Subcontractors operating away from the Project Site and/or not eligible or enrolled in the CIP with limits of \$1,000,000 per occurrence and \$1,000,000 General and Products Completed Operations Aggregate. The policy terms and conditions will be at least as broad as the primary layer Business Automobile Liability, General Liability and Employer's Liability coverages, detailed in paragraphs (c), (d) and (e) (in the case of (c), with respect to Employer's Liability only) above.

(g) Other Insurance. The Corporation shall procure such other insurance coverages for the Project that are appropriate for the risk exposures that are incidental to the design and construction of a health care facility or that are incidental to the Project.

(h) Pollution Liability. The Corporation will purchase Contractor's Pollution Liability Insurance or CPL with limits of at least \$5,000,000 per occurrence and \$5,000,000 aggregate.

(i) Crime Policy. The Corporation will procure commercial crime insurance policies, one for the Authority and one for the Corporation, each covering fraud, embezzlement, forgery, misrepresentation, robbery and theft with limits of \$3,000,000 for each policy.

The foregoing policy limits may be achieved by any combination of primary and excess policies and any blanket insurance policies covering additional property leased by the Corporation so long as the overall minimum limits are procured.

## Section 9.2 General Insurance Provisions.

(a) All of the required insurance policies set forth in Section 9.1 shall name both the Authority and the Corporation, as additional insureds, as the case may be, and the

foregoing obligation shall apply during design, construction and following the Final Completion Date. The Authority may from time to time request in writing that the Corporation furnish to the Authority a certificate or certified copy of the insurance provided by the General Contractor. The additional insured language provided within the CIP or contractor-provided General Liability and Contractor's Pollution Liability policies will be maintained and evidenced with ACORD insurance certificates through the Georgia Statute of Repose, but not less than for a period of eight (8) years following Substantial Completion.

(b) All insurance coverage obtained by the Corporation for the Project must be at a level that is no less than that which is customarily required for facilities similar to the Project.

### Section 9.3 Damage or Destruction Prior to Final Completion.

(a) With respect to the Project, if, at any time prior to the Final Completion Date, there is any material casualty of any nature (a "**Casualty**") to the Project Site or any part thereof, then the Corporation shall (a) give the Authority written notice of such Casualty within thirty (30) days of such Casualty and (b) use all commercially reasonable efforts to promptly (i) cause the area of damage or destruction to be secured in order to safeguard against injury to persons or property and (ii) seek to obtain available Insurance Proceeds for the purpose of (A) remediating any hazard, (B) restoring the Project Site to a safe condition, whether by repair or by demolition, removal of debris and screening from public view, and (C) repairing, restoring, replacing or rebuilding the Project as nearly as practicable to a condition substantially equivalent to that existing immediately prior to such damage or destruction, in accordance with the applicable provisions of this Agreement (collectively, the "**Casualty Repair Work**").

(b) The Corporation shall have the sole right and power to negotiate and make settlements with the insurance companies in order to obtain all insurance proceeds payable pursuant to the policies of insurance required under this Article IX (the "**Insurance Proceeds**"). All such Insurance Proceeds relating to the Casualty Repair Work which are to be used to pay Project Costs shall be paid to the Project Fund Custodian in trust for deposit in the Project Fund for the purpose of paying the cost of the Casualty Repair Work. The costs of such Casualty Repair Work shall be deemed Project Costs and shall be paid from available funds in the Project Fund based on Requisitions submitted by the Corporation. Notwithstanding anything else herein contained, in no event shall the Corporation be liable to pay for any Casualty Repair Work, other than from available Insurance Proceeds.

(c) In the event of a Casualty resulting from a named storm, terrorist act or other occurrence eligible for a Government Relief Grant, the Authority shall work in good faith with the Corporation to apply for all appropriate Government Relief Grants with respect to such Casualty, and shall use reasonable efforts to obtain the largest amount of such grants without jeopardizing the ability to obtain funding for essential projects affecting public health and safety. Any such grants must be applied to fund the repair or replacement as specifically outlined in the applicable award of the Government Relief Grant to the extent they provide funds for Casualty Repair Work.



(d) If the reasonably estimated costs and expenses of the Casualty Repair Work for the Project exceed the sum of (i) the amount of Insurance Proceeds received by the Authority and (ii) the amount of any Government Relief Grants received for the Project under Section 9.3(c) above (the “**Insurance Deficiency**”), then the Corporation shall have no obligation to fund the Insurance Deficiency and the Corporation shall have the option, exercisable by written notice to the Authority, to terminate this Agreement. If the Corporation exercises its option to terminate this Agreement, the Corporation shall not be obligated to perform any Casualty Repair Work, the Insurance Proceeds shall be distributed at the discretion of the Authority, (i) to perform the Casualty Repair Work or (ii) to redeem the Series 2021 Certificates.

## ARTICLE X

### REPRESENTATIONS AND WARRANTIES

Section 10.1 Representations of the Authority. The Authority makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Authority is a hospital authority duly organized and validly existing under the Act. The Authority is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, has been duly authorized to execute and deliver this Agreement, and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence as a public corporation of the State.

(b) The renovation, development, equipping and funding of the Project, the issuance and sale of the Series 2021 Certificates, the execution and delivery of this Agreement, and the performance of all covenants and agreements of the Authority contained in this Agreement, and of all other acts and things required under the Georgia Constitution and laws of the State to make this Agreement a valid and binding obligation of the Authority, in accordance with its terms, are authorized by law and have been duly authorized (in principle, as to the issuance and sale of the Series 2021 Certificates, which issuance and sale in each case will be definitively authorized by a Certificate Resolution) by proceedings of the Authority adopted at public meetings thereof duly and lawfully called and held.

(c) The authorization, execution, delivery, and performance by the Authority of this Agreement and compliance by the Authority with the provisions hereof do not and will not violate the laws of the State relating to the Authority or constitute a breach of or a default under, any other law, court order, administrative regulation, or legal decree, or any agreement, or other instrument to which it is a party or by which it is bound.

(d) There is no litigation or proceeding pending, or to the knowledge of the Authority threatened, against the Authority or against any person having a material adverse effect on the right of the Authority to execute this Agreement or the ability of the Authority to comply with any of its obligations under this Agreement.

Section 10.2 Representations and Warranties of Corporation. The Corporation hereby represents and warrants to the Authority as follows:

(a) The Corporation is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

(b) The Corporation has full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Corporation, the performance by the Corporation of its obligations hereunder, and the consummation of the transactions provided for hereby have been duly and validly authorized by all necessary limited liability company action on the part of the Corporation. This Agreement has been duly executed and delivered by Corporation and, subject to the due execution and delivery of same by the Authority, constitutes the valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

(c) The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the terms and conditions hereunder do not or will not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under, (i) any term or provision of the formation or organizational documents of the Corporation, (ii) any judgment, decree or order of any governmental entity to which the Corporation is a party or by which Corporation or any of its properties is bound or (iii) any law applicable to the Corporation unless, in each case, such violation, conflict, breach, default, loss of benefit or accelerated obligation would not, either individually or in the aggregate, have a material adverse impact on the ability of the Corporation to consummate the transactions contemplated hereby.

(d) The Corporation is an organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”); the facts and circumstances which form the basis of the application for tax-exempt status as represented to the Internal Revenue Service continue to exist; the Corporation is exempt from federal income taxes under Section 501(a) of the Code; and the Corporation is not a “private foundation” as defined in Section 509(a) of the Code

## ARTICLE XI

### DEFAULTS AND REMEDIES

Section 11.1 Corporation Default. Each of the following shall constitute a default by the Corporation hereunder (a “**Corporation Default**”):

(a) If any representation or warranty made by the Corporation in this Agreement shall at any time prove to have been incorrect in any material respect as of the time made, and the Corporation fails to cause such representation or warranty to become correct within thirty (30) days after written notice thereof is given to the Corporation by

the Authority; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty (30)-day period, such cure period shall be extended for up to thirty (30) days following the date of the original notice if within thirty (30) days after such written notice the Corporation commences and thereafter diligently continues to cause such representation or warranty to become correct.

(b) If the Corporation fails to pay any amount payable by the Corporation hereunder (except to the extent such breach is the result of the negligence of the Authority or a failure by the Authority to honor its obligations hereunder or a failure by the Project Fund Custodian to transfer funds from the Project Fund in accordance with the terms of the Project Fund Custodian Agreement) and fails to cure the same within fifteen (15) days after written notice to the Corporation from the Authority; provided, however, that if it is not reasonably possible to cure such breach within such fifteen (15)-day period, such cure period shall be extended for up to thirty (30) days following the date of the original notice if within thirty (30) days after such written notice the Corporation commences and thereafter diligently continues to cure such breach; provided, further, that no cure period shall apply to, and no rights to cure exists for, any covenant that is required to be performed by a specified date or during a specified period of time.

(c) If the Architectural Services Agreement or the Construction Contract is terminated due to the default by the Corporation thereunder.

(d) If the Corporation breaches any of its other covenants or agreements in this Agreement other than as referred to in Section 11.1(b) above and such breach is not cured within thirty (30) days after written notice thereof is given to the Corporation by the Authority; provided, however, that if it is not reasonably possible to cure such breach within such thirty (30)-day period, such cure period shall be extended for up to sixty (60) days following the date of the original notice if within thirty (30) days after such written notice the Corporation commences and thereafter diligently continues to cure such breach; provided, further, that no cure period shall apply to, and no rights to cure exists for, any covenant that is required to be performed by a specified date or during a specified period of time.

Section 11.2 Authority Default. Each of the following shall constitute a default by the Authority hereunder (an “**Authority Default**”):

(a) If any representation or warranty made by the Authority in this Agreement shall at any time prove to have been incorrect in any material respect as of the time made, and the Authority fails to cause such representation or warranty to become correct within thirty (30) days after written notice thereof is given to the Authority by the Corporation; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty (30)-day period, such cure period shall be extended for up to thirty (30) days following the date of the original notice if within thirty (30) days after such written notice the Authority commences and thereafter diligently continues to cause such representation or warranty to become correct.

(b) If the Authority breaches any of the material covenants or provisions in Article VII (except to the extent such breach is the result of the negligence of the Corporation or a failure by the Corporation to honor its obligations hereunder or a failure

by the Project Fund Custodian to transfer funds from the Project Fund in accordance with the Project Fund Custodian Agreement) and such breach is not cured within fifteen (15) days after written notice thereof is given to the Authority by the Corporation; provided, however, that if it is not reasonably possible to cure such breach within such fifteen (15)-day period, such cure period shall be extended for up to fifteen (15) days following the date of the original notice if within fifteen (15) days after such written notice the Authority commences and thereafter diligently continues to cure such breach; provided, further, that no cure period shall apply to, and no rights to cure exists for, any covenant that is required to be performed by a specified date or during a specified period of time.

(c) If the Authority breaches any of the other material covenants or provisions in this Agreement other than as referred to in Section 11.2(b) above and such breach is not cured within thirty (30) days after written notice thereof is given to the Authority by the Corporation; provided, however, that if it is not reasonably possible to cure such breach within such thirty (30)-day period, such cure period shall be extended for up to sixty (60) days following the date of the original notice if within thirty (30) days after such written notice the Authority commences and thereafter diligently continues to cure such breach; provided, further, that no cure period shall apply to, and no rights to cure exists for, any covenant that is required to be performed by a specified date or during a specified period of time.

### Section 11.3 Remedies.

(a) In addition to any other rights or remedies, except as otherwise specifically provided in this Agreement or any of the other Project Documents for the Project, any Party may institute litigation to recover damages for any Default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy) consistent with the purposes of this Agreement. The existence of any claim or cause of action of a Party against another Party, whether predicated on this Agreement or otherwise, shall not (i) constitute a defense to specific enforcement of the obligations of such other Party under this Agreement or (ii) bar the availability of injunctive relief.

(b) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement or the other Project Documents, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default.

(c) The Corporation agrees the pecuniary remedy for an Authority default shall be limited to the moneys available to the Authority in the Project Fund.

(d) Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by reason of the Default.

### Section 11.4 Step-In Rights.

(a) If the Corporation has abandoned the Project for a period of one hundred eighty (180) consecutive days without providing to the Authority reasonable assurances as

to the Corporation's ability to proceed with the Project, the Authority may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other (collectively, the "**Step-In Rights**"):

(i) Take possession of the Project Site and complete the renovation and the equipping of the Project and do anything required, necessary or advisable to fulfill the obligations of the Corporation hereunder, including the rights to avail itself of or procure performance of the Construction Contract or the Architectural Services Agreement, as the case may be, to let any contracts with the same contractors, architects, subcontractors or others and to employ watchmen to protect the Project Site from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, the Corporation hereby appoints and constitutes the Authority as the Corporation's lawful attorney-in-fact with full power of substitution in the premises to perform the following actions:

(A) to complete renovation and equipping of the Project;

(B) to use funds on deposit in the Project Cost Accounts or to advance funds in excess of the Project Budget to complete the Project;

(C) to make changes in the Design Documents which shall be necessary or desirable to complete the Project;

(D) to retain or employ new contractors, subcontractors, architects, engineers and inspectors;

(E) without inquiring into and without respect to the validity thereof, to pay, settle or compromise all existing bills and claims which may be Liens, or to avoid such bills and claims becoming Liens, against the Project Site or as may be necessary or desirable for the completion of the renovation and equipping of the Project, for the clearance of title to the Project Site;

(F) to prosecute and defend actions or proceedings in connection with the Project Site;

(G) to take action and require such performance as the Authority deems necessary or advisable under any of the payment and/or performance bonds to be furnished by the General Contractor under the Construction Contract and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; and

(H) to do any and every act which the Corporation might do in its own behalf with respect to the Project Site, it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

(ii) Exercise or pursue any other remedy or cause of action permitted at law or in equity or under this Agreement or any of the other Project Documents.

(b) Notwithstanding anything else herein contained, any delay in the construction or equipping of the Project caused by Force Majeure shall not constitute an abandonment of the Project by the Corporation for purposes of this Agreement.

Section 11.5 Termination. Notwithstanding any other provision in this Agreement to the contrary, this Agreement may not be terminated by any Party (upon a Default or otherwise), except as provided in Article XII below.

## ARTICLE XII

### TERMINATION

Section 12.1 Termination Rights. This Agreement may only be terminated under the following circumstances:

(a) By the mutual written consent of the Parties;

(b) By any Party if the Series 2021 Certificates are not finally issued by December 31, 2021;

(c) By any Party if, at any time prior to Substantial Completion, a court of competent jurisdiction has issued a final and non-appealable order that (i) permanently blocks the issuance of the Series 2021 Certificates, or (ii) permanently prohibits or materially restricts the renovation of the Project, provided that each Party has used reasonable best efforts to modify this Agreement and any other Project Documents (as necessary) in order to bring this Agreement and the other Project Documents into compliance with the law, as set forth in the above-referenced final and non-appealable order, for a period of not less than ninety (90) days.

Section 12.2 Termination Procedure.

(a) If a Party determines that it wishes to terminate this Agreement pursuant to Section 12.1 above (as applicable), then such Party must deliver a written notice to the other Party to the effect that the notifying Party thereby terminates this Agreement. The notice must be in writing, must specify in reasonable detail the factual basis for the termination of this Agreement, and must be promptly delivered in accordance with Section 14.14 below.

(b) If this Agreement is terminated pursuant to Section 12.1(c)(ii) above, then the Corporation will promptly reimburse the Authority for any out-of-pocket Project Costs that have been incurred by the Authority at the request of the Corporation.

(c) Except as provided in this Section 12.2, Section 6.1(e) regarding payment of fees, and with respect to the indemnity obligations pursuant to Article XIII below, no Party shall have any liability or obligation to any other Party with respect to the transactions contemplated hereby following termination of this Agreement except with respect to any breach occurring prior to the effective date of such termination.

## ARTICLE XIII

### INDEMNIFICATION

#### Section 13.1 Indemnification by Corporation.

(a) The Corporation will indemnify, defend and hold harmless the Authority and each of the Counties, and their respective directors, officers, employees, affiliates, attorneys, consultants and agents (collectively, the “**Indemnitees**”) from and against any loss, damage, liability, cost or expense, including reasonable attorneys’ fees, directly resulting from any third party claim arising out of (i) any condition of the Project, (ii) the Authority’s participation in this Agreement, (iii) any violation of the Georgia Local Government Public Works Construction Law to the extent applicable to the Project, (iv) any personal or bodily injury, including death, to any person, and (v) destruction of property, in each case resulting from the Corporation’s negligence or willful misconduct in connection with the Work for the Project; provided, however, that the foregoing indemnification shall not extend to those losses, damages, liabilities, costs, expenses or reasonable attorneys’ fees asserted against or suffered by any of the Indemnitees to the extent which are due to (A) the grossly negligent acts or omissions of any Indemnitee or (B) any action taken by the any Indemnitee in violation of this Agreement or any action not taken by any Indemnitee that is required under this Agreement.

(b) The Corporation will indemnify, defend and hold harmless the Indemnitees from and against any loss, damage, liability, cost or expense arising out of the participation by the Authority and the Counties in the issuance of the Series 2021 Certificates or the development and renovation of the Project, including, without limitation, (i) reasonable attorneys’ fees and reasonable expenses incurred in responding to any Internal Revenue Service audit, (ii) any violation of the Georgia Local Government Public Works Construction Law to the extent applicable to the Project, or (iii) any investigation of the offering of any of the Series 2021 Certificates by the Securities and Exchange Commission or any state securities commission; provided that in each instance such loss, damage, liability, cost or expense directly results from any third party claim that any information provided to the Authority in writing by the Corporation specifically for inclusion in any official statement or other offering document prepared in connection with the issuance of any of the Series 2021 Certificates contained a material misstatement or omission; and provided, further, that the foregoing indemnification shall not extend to those losses, damages, liabilities, costs, expenses or reasonable attorneys’ fees asserted against or suffered by any Indemnitee to the extent same are due to the grossly negligent acts or omissions of such Indemnitee.

#### Section 13.2 Indemnification Procedures.

(a) If any Indemnitee receives notice of any action or proceeding of any matter for which indemnification may be claimed under Section 13.1 above (a “**Claim**”), such Indemnitee, shall within fifteen (15) days following service of process or other written notification of such Claim notify the Corporation in writing thereof together with a statement of such information respecting such matter as the Indemnitee then has; provided, however, the failure to notify the Corporation shall not relieve the Corporation from any liability which it may have to the Indemnitee.

(b) Not later than ten (10) days after receipt by the Corporation of written notice from any Indemnitee of a Claim, the Corporation shall, at the Corporation's own cost and expense, assume on behalf of such Indemnitees and conduct with due diligence and in good faith the defense thereof with counsel selected by the Corporation and reasonably satisfactory to such Indemnitee; provided further, that in all such cases where any Indemnitee is a named or becomes a named or indispensable party to any such proceeding or action, such Indemnitee as applicable, shall have the right to be represented therein by advisory council of its own selection, and at its own expense; and provided further, that if the defendants in any such action or proceeding include the Corporation, and any Indemnitee, and such Indemnitee, shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Corporation, such Indemnitee, shall have the separate right to be represented by separate counsel to participate in the defense of such action or proceeding on its own behalf, at the expense of the Corporation. For all purposes hereof and for purposes of clarification, any and all reasonable legal costs and expenses incurred by any Indemnitee that relate to matters covered by the Corporation's indemnification, hold harmless and, if applicable, defense rights shall, in all cases, be timely reimbursed by the Corporation. Failure to timely pay such reimbursable legal costs and expenses to an Indemnitee shall be treated like damages and be subject to the payment of interest, collection and other applicable charges. In the event of the failure of the Corporation to perform fully in accordance with the defense obligations under this Section 13.2(b), any such Indemnitee may, at its option, and without relieving the Corporation of its obligations hereunder, so perform, but all damages so incurred by such Indemnitee in that event shall be reimbursed by the Corporation to such Indemnitee.

(c) Any Indemnitee asserting a Claim under this Section shall, at no cost or expense to such Indemnitee, cooperate with the Corporation and shall provide the Corporation with such information and assistance as the Corporation shall reasonably request in connection with such Claim. Any Indemnitee making a Claim under this Section shall use its good faith efforts to afford the Corporation and its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Authorities, asserting any Claim against such Indemnitee covered by the indemnity contained in this Article XIII or conferences with representatives of or counsel for such Person. The Corporation shall have the right to settle, compromise or pay any Claim being defended by the Corporation without the consent of any Indemnitee so long as such settlement or compromise does not cause such Indemnitee to incur any present or future costs, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by such Indemnitee.

(d) It is understood and agreed by the Corporation that if any Indemnitee is made a defendant in any Claim for which it is entitled to be indemnified pursuant to this Agreement, and the Corporation fails or refuses to assume the defense thereof, after having received notice by any Indemnitee of its obligation hereunder to do so, said Indemnitee may compromise or settle or defend any such Claim, and the Corporation shall be bound and obligated to reimburse said Indemnitee for the amount expended by said Indemnitee in settling and compromising any such Claim, or for the amount expended by any Indemnitee in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by any Indemnitee for defense or settlement of such Claim. Any judgment rendered against any Indemnitee or amount expended by any Indemnitee in



compromising or settling such Claim shall be conclusive as determining the amount for which the Corporation is liable to reimburse any Indemnitee hereunder. To the extent that any Indemnitee has the right to, and in fact does, assume the defense of such Claim, such Indemnitee shall have the right, at its expense, to employ independent legal counsel in connection with any Claim, and the Corporation shall cooperate with such counsel in all reasonable respects at no cost to such Indemnitee.

Section 13.3 Survival. The obligations contained in this Article XIII will survive the expiration or earlier termination of this Agreement.

## ARTICLE XIV

### MISCELLANEOUS

Section 14.1 Further Agreements. The Parties agree to use their good faith efforts, as soon as reasonably practicable following the execution of this Agreement to complete and execute all documents necessary, appropriate or desirable to carry out the transactions agreed to by the Parties in this Agreement, including the other Project Documents.

Section 14.2 No Reliance. Each Party has entered into this Agreement upon the advice of advisors of their own choosing, and each Party warrants and represents that it is not relying on any statement or advice of or from any other Party or any advisor of any other Party not expressly set forth herein. Each Party is entering into this Agreement freely and voluntarily and each desires to be bound by this Agreement. Each Party has been fully informed of the terms, conditions and effects of this Agreement.

Section 14.3 No Third Party Beneficiaries. All rights and obligations of each Party, express or implied, shall be only for the benefit of the Parties, and their respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements shall not inure to the benefit of any other Person, whomever, it being the intention of the undersigned Parties that no other Person shall be or be deemed to be a third party beneficiary of this Agreement.

Section 14.4 Governing Law. THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA.

Section 14.5 Venue for Actions. The venue for any legal action arising out of this Agreement will lie exclusively in the Superior Court of Fulton County, Georgia.

Section 14.6 Time of the Essence. Subject to the provisions hereof, the Parties recognize and agree that time is of the essence in consummating the transactions contemplated hereby. Accordingly, the Parties hereby agree that they shall act expeditiously and in good faith to consummate the transactions contemplated hereby as soon as possible after the date of this Agreement, each Party recognizing that it is to the Parties' mutual benefit that the transactions contemplated hereby be consummated as soon as possible.

Section 14.7 Limitation of Liability.

(a) To the extent legally permissible, no Party shall be liable to any other Party for any special, indirect, incidental, consequential, exemplary, treble or punitive damages,

in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party. Notwithstanding the foregoing, this limitation of liability shall not apply to any indemnification for third-party claims pursuant to, but subject to the limitations in, Article XIII above. This provision shall survive the expiration or earlier termination of this Agreement.

(b) No officer, director, member, employee or agent of the Authority or the Corporation shall have any individual liability with respect to the transactions contemplated herein.

(c) The Authority shall have no obligation or liability with respect to the payment or funding of Project Costs for the Project (except out of the proceeds of the Series 2021 Certificates and any Insurance Proceeds as expressly provided herein). The Corporation shall have no obligation or liability with respect to the issuance and sale of the Series 2021 Certificates or the funding of the Project Fund, other than its indemnification obligations set forth in Section 13.1(b).

#### Section 14.8 Confidentiality/Georgia Open Records Laws.

(a) The Corporation has familiarized itself with the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq.*) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, *et seq.*) (collectively, the “**Open Government Laws**”) applicable to the issues of confidentiality and public information. The Corporation shall be solely responsible for clearly identifying and labeling as “Confidential” or “Proprietary” any such Confidential Material (including, if necessary, submission of an affirmative affidavit regarding such confidential and/or proprietary information) which it asserts is exempt from disclosure under Section 50-18-72 of the Open Government Laws or any other applicable law. However, the Corporation is advised that such designations on any such Confidential Material shall not be binding on the Authority or determinative of any issue relating to confidentiality. Blanket “Confidential” and “Proprietary” designations by the Corporation are strongly discouraged.

(b) In no event shall the Authority or any of its agents, representatives, consultants, directors, members, officers or employees be liable to the Corporation for the disclosure of all or a portion of any such Confidential Material or other information pursuant to a request under the Open Government Laws.

(c) If the Authority receives a request for public disclosure of all or any portion of any Confidential Material identified as “Confidential” or “Proprietary” by the Corporation in connection with Project, the Authority will notify the Corporation of the request in sufficient time to allow the Corporation to review such request and take whatever action it shall deem appropriate to protect any such Confidential Material; provided, however, the Corporation shall bear the sole responsibility for the costs and expenses of all such actions. Among others, the Corporation may seek a protective order or other appropriate remedy. If the Authority determines in good faith that the Confidential Material identified as “Confidential” or “Proprietary” is not exempt from disclosure under the Open Government Laws, then, unless otherwise ordered by a court of competent jurisdiction, the Authority will release the requested information. In the absence of a protective or other

similar order rendered by a court of competent jurisdiction, the Authority shall make the final determination regarding whether the requested Confidential Material is to be disclosed or withheld.

(d) Subject to applicable law (including the Open Government Laws) and to Sections 14.9(b) and 14.9(c) above, each Party agrees that it will hold in confidence and not disclose to any third party any and all information of the other Party that it obtains in connection with the financing, construction, development and operation of the Project and will not disclose, publish or make use of such information for any purpose other than as contemplated by this Agreement without the prior written consent of such Party. The obligation of the Parties under this Section 14.9(d) will not (i) restrict a Party from making any information available to any of its advisers who have been advised of the confidential nature of such information and agree to maintain its confidentiality or (ii) apply to any information that is on the date hereof or hereafter becomes publicly known and in the public domain through means that do not involve a breach by any Party of this Agreement.

Section 14.9 Successors and Assigns. The provisions hereof will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as provided in Section 14.11 below, this Agreement may not be assigned by a Party without the prior written consent of the other Party.

Section 14.10 [Reserved].

Section 14.11 Waiver. No term or condition of this Agreement will be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

Section 14.12 Notices. All notices and other communications required or contemplated hereunder will be in writing and will be (a) mailed by first-class mail, postage prepaid certified or registered with return receipt requested, or delivered by a reputable independent courier service, and will be deemed given two (2) Business Days after being deposited in an official U.S. mail depository (if mailed) or when received at the addresses of the Parties set forth below (if couriered), or at such other address furnished in writing to the other Party or (b) sent by electronic mail and will be deemed given upon telephonic confirmation of receipt from the Party's principal addressee:

If to the Authority:

The Fulton-DeKalb Hospital Authority  
145 Edgewood Avenue – Second Floor  
Atlanta, Georgia 30303  
Attention: Jevon Gibson, Chief Executive Officer  
E-mail: [jjgibson@thefdha.org](mailto:jjgibson@thefdha.org) with concurrent copies to:

The Fulton-DeKalb Hospital Authority  
145 Edgewood Avenue – Second Floor  
Atlanta, Georgia 30303  
Attention: Jasmine Harris Accountant  
E-mail: [jcurry@thefdha.org](mailto:jcurry@thefdha.org)

Arnall Golden Gregory LLP  
171 17th Street, NW, Suite 2100  
Atlanta, Georgia 30363  
Attention: Sandra Z. Zayac, Esq.  
E-mail: [sandra.zayac@agg.com](mailto:sandra.zayac@agg.com)

If to the Corporation:

Grady Memorial Hospital Corporation  
80 Jesse Hill Jr. Drive, SE  
Atlanta, Georgia 30303  
Attention: John Hauptert, President and CEO  
E-mail: [jhauptert@gmh.edu](mailto:jhauptert@gmh.edu)

with a concurrent copy to:

Grady Memorial Hospital Corporation  
80 Jesse Hill Jr. Drive, SE  
Atlanta, Georgia 30303  
Attention: Tim Jefferson, General Counsel  
E-mail: [tjefferson@gmh.edu](mailto:tjefferson@gmh.edu)

Section 14.13 Delays or Omissions. Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any Party upon any breach or default of any other Party under this Agreement will impair any such right, power or remedy of such Party nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

Section 14.14 No Joint Venture. Nothing contained in this Agreement or any other agreement between the Corporation and the Authority is intended by the Parties to create a partnership or joint venture between the Corporation and the Authority and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other for any purpose whatsoever. Except as described in Article XIII hereof, no Party will in any way assume any of the liability of the other for acts of the other or obligations of the other Party. Except as described in Article XIII hereof, each Party will be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 14.15 Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 14.16 Interpretation. When used in this Agreement, the singular includes the plural and the plural the singular, and words used herein importing any particular gender shall include the other non-specified gender. The terms and conditions of this Agreement represent the result of negotiations between the Authority and the Corporation, each of which were represented and/or had the opportunity to be represented by independent counsel and neither of which has

acted under compulsion or duress; consequently, the normal rule of construction that any ambiguity be resolved against the drafting party will not apply to the interpretation of this Agreement or of any exhibits, addenda or amendments hereto. Each reference to a Person shall include a reference to such Person's successors and permitted assigns. All references to "Articles", "Sections", "Schedules" or "Exhibits" shall be references to the Articles, Sections, Schedules and Exhibits to this Agreement, except to the extent that any such reference specifically refers to another document.

Section 14.17 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 14.18 Entire Agreement; Amendment. This Agreement (including the recitals and Exhibits) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and thereof and supersedes any prior or contemporaneous, written or oral agreements or discussions between the Parties. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties.

Section 14.19 Severability. If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable the remainder of this Agreement shall not be affected thereby and all other conditions and provisions in the remainder of this Agreement shall nevertheless remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law and to this end the provisions of this Agreement are declared to be severable; provided, however, that any such provision shall only be severable so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any determination that a term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible so that transactions contemplated hereby are fulfilled to the greatest extent possible.

Section 14.20 Required Notifications. Should any Party receive knowledge about any matter which may constitute a breach of any of its representations or warranties set forth in Article X above which arises after the date of this Agreement, it shall promptly notify the other Party of the same in writing.

Section 14.21 Survival. All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement. No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement.

Section 14.22 Force Majeure. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure, then the performance of such obligation shall be extended by the length of such delay. In response to and during any delay caused by a Force Majeure, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible and any Party seeking an excuse of performance due to such Force Majeure shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure. Without limiting the

foregoing, if a Party fails to meet a deadline specified in this Agreement due to another Party's failure to meet a prior and related deadline, such subsequent deadline shall be extended by the number of days the delay was attributable to the prior deadline failure, and the Party failing to meet the prior deadline shall not be relieved of liability for such breach. The Parties agree that an event of Force Majeure shall not serve as an excuse to any Party's failure to honor a payment obligation.

Section 14.23 Effect on Lease. Notwithstanding anything else herein contained, (i) the provisions of this Agreement, other than those acknowledging that the Project is subject to the terms of the Lease, shall amend, modify or otherwise affect any of the provisions of the Lease or the interpretation thereof and (ii) any conflict between the terms hereof and the terms of the Lease shall be resolved in favor of the terms hereof.

Section 14.24 Review by Counties. The Corporation and the Authority hereby acknowledge that Fulton and DeKalb Counties have each had an opportunity to review this Agreement and provide feedback with respect to its terms.

Section 14.25 Certificate of Need. The Corporation and the Authority acknowledge that a certificate of need issued by the Georgia Department of Community Health (the "Certificate of Need") shall be required in connection with portions of the Project. The parties hereto agree that issuance of such Certificate of Need shall be a condition to the issuance of the Series 2021 Certificates.

Section 14.26 Appointment to the Building Committee. The Corporation hereby agrees to that the Authority shall have the right to appoint two members to the Building Committee. The two members shall be approved by the Authority and the Chairman of the Corporation's Board of Trustees and shall serve as additional ex-officio, non-voting members to the Building Committee.

Section 14.27 Authority Consultant. In order for the Authority to carry out its fiduciary responsibilities, the Corporation acknowledges that the Authority has the right to engage a consultant, at the Authority's expense, to do periodic reviews of information provided to the Authority by the Corporation.

Section 14.28 Binding Arbitration. If either the Authority or the Corporation requests binding arbitration with respect to a Disputed Requisition in accordance with the provisions of Section 5.2 hereof, such arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (the "**Arbitration Rules**"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator selected pursuant to the Arbitration Rules. The arbitration shall be governed by the laws of the State of Georgia. If the arbitrator determines that all or any portion of a Disputed Requisition should not have been paid with funds from the Project Fund, such amount shall be transferred by the Corporation into the Project Fund. No other awards or damages shall be made by the arbitrator in any arbitration initiated under this Agreement, including, without limitation, any consequential or punitive damages. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. The award of the arbitrator shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

*[Execution Pages Follow]*

This Agreement has been executed and delivered as of the date first written above.

**THE FULTON-DEKALB HOSPITAL  
AUTHORITY**

By: \_\_\_\_\_  
Kathryn Flowers-Glasco  
Chair

Attest:

By: \_\_\_\_\_  
Pastor Eric Thomas  
Secretary

[SEAL]

*[Authority Signature Page to Development and Funding Agreement]*

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This Agreement has been executed and delivered as of the date first written above.

**GRADY MEMORIAL HOSPITAL  
CORPORATION**

By: \_\_\_\_\_,  
John Hauptert, President and CEO

By: \_\_\_\_\_  
Larry Gellerstedt, Chairman

Attest:

By: \_\_\_\_\_  
Timothy Jefferson  
Secretary

[SEAL]

*[Corporation Signature Page to Development and Funding Agreement]*

## **EXHIBIT A**

### **Project Site**

[to be provided by the Corporation]

## EXHIBIT B

### Form of Requisition

REQUISITION NO. \_\_\_\_\_

\_\_\_\_\_,  
as Project Fund Custodian

Re: Project Fund Requisition No. \_\_\_\_\_

To the Addressee:

The undersigned Grady Memorial Hospital Corporation (the "Corporation") hereby submits this Requisition for payment from the "Project Fund" held by you as Project Fund Custodian under and pursuant to the Project Fund Custodian Agreement dated as of \_\_\_\_\_, 2021 among The Fulton-DeKalb Hospital Authority (the "Authority"), the Corporation and you.

**Total Amount Requested:** \$ \_\_\_\_\_

**Total Disbursements to Date:** \$ \_\_\_\_\_.

Pursuant to Section 7.3 of the Development and Funding Agreement dated as of \_\_\_\_\_, 2021 (the "Funding Agreement") between the Corporation and the Authority, the Corporation hereby certifies as follows:

1. The Project Costs to be paid or reimbursed are identified on Schedule 1 attached hereto which also specifies the amount to be paid to each recipient and the payment instructions for each such payment.
2. Each Project Cost requested to be paid or reimbursed pursuant to this Requisition constitute Project Costs as defined in the Funding Agreement. [None of the Project Costs requested to be paid or reimbursed pursuant to this Requisition constitute Project Costs for "Work" as defined in the Funding Agreement.]
3. A copy of this Requisition has been provided to the Authority, along with copies of the invoices associated with this Requisition.

This \_\_\_\_\_ day of \_\_\_\_\_, 20,\_\_\_\_.

**GRADY MEMORIAL HOSPITAL CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**THE FULTON-DEKALB HOSPITAL AUTHORITY**

By: \_\_\_\_\_

Name: .

Title:

## **PAYMENT CERTIFICATE\***

The undersigned hereby certifies to the Project Fund Custodian and the Authority that he has read the attached Requisition No. \_\_\_\_\_. Payment or reimbursement for the portion of the Project Costs in the amounts set forth in Requisition No. \_\_\_\_\_ for any Work is hereby approved.

The Work for which payment is being requisitioned hereby is completed and in place or is suitably stored.

Terms used herein but not defined herein shall have the meanings given to such terms in the Development and Funding Agreement dated as of \_\_\_\_\_, 2021, between The Fulton-DeKalb Hospital Authority and Grady Memorial Hospital Corporation.

[LEAD ARCHITECT/PROJECT MANAGER]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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\*This Certificate shall only be required if the Requisition includes amounts to pay for "Work" covered under the Construction Contract.