City of Fairburn
56 Malone Street
Fairburn, GA 30213
August 26th, 2019 @ 6:00 PM

WORKSHOP AGENDA

I.	Meeting Called to Order:	The Honorable Elizabeth Carr-Hurst, Mayor
II.	Roll Call	Shana T. Moss, Interim City Clerk
III.	Presentations:	
IV.	Discussions:	Councilmembers
V.	Review of Agenda Items for Council Session	Councilmembers
VI.	Adjournment	Councilmembers

CITY OF FAIRBURN
City Hall
56 Malone Street
Fairburn, GA 30213
August 26th, 2019 @ 7:00 PM

Regular Agenda

The Honorable Mayor Elizabeth Carr-Hurst, Presiding

The Honorable Mayor Pro-Tem Linda J. Davis
The Honorable Pat Pallend
The Honorable Ulysses J. Smallwood

The Honorable Alex Heath
The Honorable Hattie Portis-Jones
The Honorable James Whitmore

Mr. Randy Turner — City Attorney

I.	Meeting Called to Order:	The Honorable Mayor Carr-Hurst
II.	Roll Call:	Shana T. Moss Interim City Clerk
III.	Invocation:	Apostle LaReese Howell New Horizons in Faith Church Fairburn, GA
IV.	Pledge of Allegiance:	In Unison
V.	Presentation:	

VI. Public Comments: Thirty (30) minutes shall be available for public comments. Each speaker shall be limited to three (3) minutes; however, a speaker may transfer his or her three (3) minutes to another speaker, but no speaker shall be permitted to speak for more than (6) minutes; further in the event, if more than ten (10) speakers desire to speak, each speaker shall be limited to two (2) minutes and no speaker may speak more than four (4) minutes. Issues raised at this time are generally referred to the City Administrator for review. Responses will be provided at a later date.

VII.	Adoption of the Council Agenda:	Councilmembers
VIII.	Adoption of Consent Agenda Items:	Councilmembers
IX.	Adoption of City Council Minutes: (July 22, 2019 and August 12, 2019).	Councilmembers

X. Public Hearing: None

XI. Agenda Items:

1. **Engineering** Mr. Lester Thompson

For Mayor and Council to approve Task Order # 1 with Moreland Altobelli for Construction Engineering and Inspection Services on the Roadway Improvements on Various City Roads Project (19-002).

2. **Engineering** Mr. Lester Thompson

For Mayor and Council to approve an Intergovernmental Agreement (IGA) with the City of Atlanta on the Downtown LCI Streetscape Project.

3. **City Attorney** Mr. Randy Turner

For Mayor and Council to approve the Intergovernmental Agreement between Fulton County, Georgia and the City of Fairburn for Wastewater Services.

4. **City Attorney** Mr. Randy Turner

For Mayor and Council to amend the intergovernmental agreement with the Fulton County School District approved by City Council on May 13, 2019 as to extend the due diligence period for thirty (30) days from August 26, 2019 to September 25, 2019.

XII. Council Comments Councilmembers

XIII. Executive Session Mr. Randy Turner

XIV. Adjournment Councilmembers

*When an Executive Session is required, one will be called for the following issues: (1) Personnel (2) Real Estate or (3) Litigation.

Mayor and Council Meeting Minutes
July 22nd, 2019
City Hall
7:00 PM

I. The meeting was called to order by the Honorable Mayor Elizabeth Carr-Hurst at 7:00 pm.

II. Roll Call was taken by Interim City Clerk, Shana T. Moss with the following members present:

Mayor Elizabeth Carr-Hurst

Mayor Pro Linda J. Davis	Councilman Alex Heath
Councilman Pat Pallend	Councilwoman Hattie Portis-Jones
Councilman Ulysses J. Smallwood	Councilman James Whitmore

The attendance of Mayor and Council constituted a quorum and the meeting proceeded.

Little Miss Payton Lynch joined Mayor Carr-Hurst on the dais as an Honorary Member of Mayor and Council.

III. The invocation was given by Pastor Douglas Thompson of Harvest Rain International of Fairburn.

IV. The Pledge of Allegiance was recited in unison.

V. Presentations: There were none.

VI. Public Comments:

1. Ms. Lula Howard stated she has lived in Fairburn for 25 years. She resides on Washington Street and she has concerns regarding debris such as limbs and leaves. Every time she calls, she is told the machine is down. Also, in her area on Splitwood Lane when it rains the debris goes into the street. She is further concerned about the trash cans that are left on the road after the trash is collected.

2. Mr. Alexander Doose spoke regarding the Frankie Arnold Stage. He stated he and his wife recently celebrated their 30th Wedding Anniversary at the stage and the stage is in bad shape. He observed deterioration of the building and property there was a wasp nest next to the columns on the front of the stage. There is discoloration on the steps and the grass hasn't been taken care of. Paint is peeling on the ceiling of the stage and there is no name identification on the stage.

3. Mr. Walt Brown addressed Mayor and Council representing The Ronnie Thames Foundation. The Ronnie Thames Foundation is a 501(c)(3) nonprofit organization dedicated to helping children and their families who have faced devastation and suffering as the result of a fire. The foundation was founded in 2013 by Ron and Teresa Thames in honor of Ron's son Ronnie who was tragically killed in a motorcycle accident in 2004. Their mission is an endearing tribute to the memory of Ronnie Thames. The Ronnie Thames Foundation is committed to being an agent of assistance to firefighters and community organizations by providing educational programs focused on the prevention of fires through safety awareness. Mr. Brown further stated that the Thames Foundation would be sponsoring Biscuits with the Bravest on Saturday August 24, 2019 from 9:00 am-1:00 pm in Downtown Fairburn. This event will honor the Fairburn and Union City Fire Departments. This event will also be educational to enlighten citizens as to the dangerous job that firefighters have.

4. Mrs. Beatrice Doose spoke regarding the Frankie Arnold Stage. She stated she and her husband reside on Valley Drive and this stage should be a Beacon of Light for the city. She does not think the stage is being kept up and being named to honor a councilwoman (former) is not acceptable in its current condition. She would like to see the city spruce it up and remain dedicated to keeping it up.

5. Mrs. Igna Kennedy spoke regarding the Lighting Community. She said vacant houses are being demolished and she is glad. There were problems in the community with unsavory activities, but they are now gone. She often sees Mr. Harvey Stokes and Mr. Eddie Powell and their teams in the area picking up trash and debris.

VII. Adoption of the Council Agenda. *Mayor Hurst informed Council she would like to add an item to the original agenda. The item added would be the Utility Relocation of the East Broad LCI project. Motion to approve the addition and the regular agenda was made by Councilman Pallend and the second was provided by Councilman Whitmore. Vote: (6-0) Motion Carried.*

VIII. Adoption of the Consent Agenda Items: There was not a consent agenda.

IX. Adoption of City Council Minutes from June 10th, 2019. Motion to approve was made by Councilman Smallwood and the second was provided by Mayor Pro-Tem Davis. Vote: (6-0) Motion Carried.

X. Public Hearing
Planning and Zoning — Ms. Tarika Peeks

Mayor Carr-Hurst opened the Public Hearing at 7:20 p.m.
Rezoning 19RZ-005-City of Fairburn. City Planner Ms. Tarika Peens presented the rezoning of +/- 0.953 acres of City owned property adjacent to the Clorox warehouse facility on Creekwood Road from AG-1 (Agricultural District) to M-1 (Light Industrial District). Clorox is in need to expand the warehouse/distribution facility located at 1595 Oakley Industrial Blvd., by adding 345,450 square feet of floor area. The expansion of the facility was approved by the City in 2010 and was authorized pursuant to a 2010 development by the Atlanta Regional Commission.
In Favor of Rezoning:
Mr. Larry Dingle, LLC of Grantley LLC commended staff on the rezoning process and stated this rezoning was approved by ARC.
Opposition: None
Mayor Carr-Hurst closed the Public Hearing at 7:25 p.m.
Motion to approve the rezoning was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Davis. Vote: (6-0) Motion Carried.

XI. Agenda Items:

1. Office of the Mayor — Mayor Elizabeth Carr-Hurst

Tyler Technologies. Mayor Carr-Hurst stated the city's current utility system (Harris) is 10 years old and will no longer be supported. Incode and Utility Billing need to support one another. The current system is antiquated and December 31, 2019 the current system will no longer be available. On June 13th, 2019 she and councilmembers Davis, Pallend and some city staff met with Tyler Technologies to discuss the integration process. Mr. Blake Reynolds of Tyler Technologies was present and stated he enjoyed the initial meeting with Fairburn and would love for his company to have the city's business. The initial cost would be $69,420.00 and the yearly maintenance thereafter would be

$11,120.00. The motion to approve was made by Councilman Heath and the second was provided by Mayor Pro-Tem Davis.

Vote: (6-0) Motion Carried.

2. Office of the City Clerk — Ms. Shana T. Moss

Interim City Clerk, Shana T. Moss presented the Invoice and Intergovernmental Agreement for Fulton County Department of Registration and Elections for the 2019 General Election. Fairburn will have 3 council seats on the ballot for the November 5, 2019 General Election. The projected cost of the election will be $33,350.00. The motion to approve was made by Councilman Smallwood with the second provided by Councilman Whitmore. Vote: (6-0) Motion Carried.

3. Finance Department — Ms. Angela Jackson

Finance Director Ms. Angela Jackson presented 6 budget amendments to council for approval. All of the funds are allocated and funded through the FY 2018-2019 Budget. The budget amendments were:

2-1 To transfer funds from various line items to fund the Gateway Project and the Park and Ride Parking Lot. $568,262.00
2-2 To transfer funds to provide operating expenses for Court Services. $142.000.00
2-3 To appropriate technology revenue for Police Technology expenses. $20.000.00
2-4 To transfer funds to build the docks at Duncan Park. $24,871.00
2-5 To transfer funds for the August 2019 election expenses. $33,350.00
2-6 To appropriate TSPLOST revenue to fund road improvements. $356,930.00

Councilwoman Portis-Jones had questions regarding the new fire station being built that the citizens voted on. She said this is what the mayor and council should be focused on. Ms. Jackson stated the fire station was approved with different funds. Mayor Carr-Hurst stated these funds were allocated within this budget Year. The motion to approve was made by Councilman Whitmore with the second provided by Councilman Heath. Vote: (5-1) Motion Carried.

Opposed: Councilwoman Portis-Jones

4. Parks and Recreation — Ms. Chapin Payne

Parks and Recreation Director Ms. Chapin Payne presented a usage agreement between the City of Fairburn Parks and Recreation Department and Soccer in the Streets, Inc. This agreement will provide a sports-based youth development program to children and families in the city. This program will be free and will consist of the free soccer program and uniform cost. Soccer-in-the-Streets Community Program Manager, Mr. Ulric Alsobrook was present for the meeting. The motion to approve this agreement was made by Councilman Pallend and the second was provided by Mayor Pro-Tem Davis. Vote: (6-0) Motion Carried.

5. Community Development — Mr. Lester Thompson

Community Development Director Mr. Lester Thompson presented a contract for Pond & Company for on call Professional Engineering and Landscape Architectural Services. The motion to approve was made by Councilman Whitmore with the second provided by Mayor Pro-Tem Davis.

Vote: (6-0) Motion Carried.

6. Engineering/Public Works — Mr. Lester Thompson

Mr. Lester Thompson presented a contract for Moreland Altobelli Associates, Inc. for on-call Construction Management Services. Moreland Altobelli assist with the construction management for the city's CDBG, LMIG and TSPLOST programs and other special projects as required. This agreement is for the duration of three (3) years. The motion to approve was made by Councilman Whitmore and the second was provided by Councilman Heath. Vote: (6-0) Motion Carried.

Engineering Mr. Lester Thompson

Mr. Lester Thompson presented a ratification for the Georgia Department of Transportation for the SR 14; Campbellton Road; Smith Street and Washington Street. The project includes streetscape enhancements along US 29 from Malone Street to approximately 175 feet north of Strickland Street. This agreement was time sensitive; therefore, upon review by Attorney Turner, Mayor Carr-Hurst executed the contract. The motion to approve was made by Mayor Pro-Tem Davis with the second provided by Councilman Whitmore. Vote: (6-0) Motion Carried.

7. Engineering Mr. Lester Thompson

Mr. Lester Thompson presented information on Mr. Aaron Phillips, CEO of AMCON as the city's appointment to the South Fulton CID Board. Motion to approve was made by Councilman Pallend with the second provided by Councilman Heath. Vote: (6-0) Motion Carried.

8. Utility (Water & Sewer) Mr. Lester Thompson

Mr. Lester Thompson presented Task Order #135 with Integrated Science and Engineering, Inc. (ISE) For Renaissance Parkway Sanitary Outfall Construction Phase Services. This task order is for orders associated with civil engineering, water and wastewater, and water resource engineering on an as needed basis. Motion to approve was made by Councilman Smallwood and the second was provided by Mayor Pro-Tem Davis. Vote: (6-0) Motion Carried.

9. Engineering Mr. Lester Thompson

Mr. Lester Thompson presented the 2019 LMIG/TSPLOST Road Improvement Project Contract Award with ShepCo Paving, Inc. for an amount of $544,893.71. The City of Fairburn receives an annual grant of approximately $170,000 in LMIG funds for various road improvements. The motion to approve was made by Councilman Whitmore and the second was provided by Councilman Smallwood. Vote: (6-0) Motion Carried.

10. Water and Sewer Mr. Lester Thompson

Mr. Lester Thompson presented contract award to Crawford Grading & Pipeline, Inc in the amount of $310,615.00 for the Renaissance Parkway Sanitary Sewer Outfall Project. Proposals for the Renaissance Parkway Sanitary Sewer Outfall Project (RFP# 18-009, Sewer Installation – Renaissance Parkway) were originally requested on July 6, 2018 by the City of Fairburn's Utility Department. The project was placed on-hold to redesign the layout to eliminate excess clearing and reduce construction costs. The redesign required an easement acquisition from the Knight Group. The easement agreement with the Knight Group was approved at the February 11th, 2019 City Council Meeting. The project was put back out to bid based on the new alignment on April 24th, 2019 (IFB # 19-001)- RENAISSANCE PARKWAY SANITARY SEWER OUTFALL). The bid opening date was May 29th, 2019 at 3:00p.m. at which time the two (2) bids received were opened and read aloud. After completion of the bid evaluation, it was determined that Crawford Grading & Pipeline, Inc. was the lowest responsive and responsible bidder with a bid price of $310,615.00. The motion to approve was made by Mayor Pro-Tem Davis with the second provided by Councilman Whitmore. Vote: (6-0) Motion Carried.

11. Electrical Department Mr. Eddie Powell

Mr. Eddie Powell, Electrical Superintendent presented the contract award for the LCI East Broad Streetscape Project. This project will allow 28 additional parking spaces downtown and allow phone and cable lines to be underground. The allowance of additional parking spaces will be along E. Broad Street from Landmark Christian School parking lot. The motion to approve was made by Councilman Whitmore and the second was provided by Councilman Heath. Vote: (6-0) Motion Carried.

XII. Council Comments:

Councilwoman Portis-Jones stated she is the lone ranger regarding the budget. There are items that are not being talked about. She has not received a mid-year budget review. She stated the city's budget is a contextual document, it serves a specific purpose as the city's charter state this. She has a fiduciary duty as an elected official that she takes seriously. She is concerned that mayor and council are not taking a proactive and vigilant role in the finances of the city and one day they will wake up and it will be too late and the damage will be done.

Councilman Pallend welcomed Payton Lynch the honorary guest member of council.

Councilman Smallwood applauded the city staff for a job well done. The city is beautiful, and the park is always pristine, he applauded Parks and Recreation Director Ms. Chapin Payne and her team.

Mayor Pro-Tem Davis had no comment.

Councilman Heath stated he would like to thank every staff member and city employee for their hard work. He said each of you make the mayor and council look good.

Councilman Whitmore had no comment.

Miss Payton Lynch (Guest Honorary Member) stated she was nervous when she first got to the meeting. She was very excited and enjoyed herself.

Mayor Carr-Hurst stated the City of Fairburn lost two great citizens. Former Councilman Doug Crawford passed away. Mr. Ricky Hilley-Owner of Casablanca Catering passed away. Casablanca was in the process of relocating to Fairburn from Palmetto. Mayor Carr-Hurst0 sta1ted his wife, Mrs. Ursula Hilley stated she was still moving forth because that is what Rick wanted. Rick would say, "the show doesn't stop." Mayor Carr-Hurst asked everyone to keep both families in their prayers. She further stated she takes her fiduciary duties seriously and she is above board with every transaction in the city. Also, she stated if anyone wants to come in and review anything in city hall, they are welcome to come in. When she took office, she stated she was going to move Fairburn forward and that is what she is doing.

XIII. Executive Session: there was none.

XIV. Adjournment: With no further business at 8:21 p.m. a motion to adjourn was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Davis.

Mayor and Council Meeting Minutes
August 12, 2019
City Hall
7:00 PM

I. The meeting was called to order by the Honorable Mayor Elizabeth Carr-Hurst at 7:00 pm.

II. Roll Call was taken by Interim City Clerk, Shana T. Moss with the following members present:

Mayor Elizabeth Carr-Hurst

Mayor Pro-Tem Linda J. Davis
The Honorable Pat Pallend
The Honorable James Whitmore
The Honorable Alex Heath
The Honorable Hattie Portis-Jones

Member Absent: The Honorable Ulysses J. Smallwood

III. The invocation was rendered by Bishop Aaron Lackey of Temple of Prayer Family Worship Cathedral.

IV. The Pledge of Allegiance was recited in unison.

V. Presentation
Mr. Carlos Thomas of Fulton County Youth Community Services Program presented Mental Fitness Founder and Director, Mr. John Childs with a $25,000 check. Mental Fitness is an afterschool program that provides homework assistance healthy snacks and STEAM (Science, Technology, Engineering, Art, and Mathematics) enrichment. Mr. Thomas stated Mr. Child's program is doing great things in the community and keeping students engaged and safe, and on behalf of Fulton County, Commissioner Chair Pitts and the commissioners it was an honor to present these funds to Mental Fitness. Mr. Childs spoke about the great impact these funds will have on his program and more kids would be able to participate by being awarded these additional funds. Mr. Childs spoke about being invited to Inglewood California by their Mayor and Council to conduct a summer camp. Councilman Whitmore was an advocate for Mental Fitness and informed the Inglewood elected officials of the successes that Fairburn were having, and they also wanted to partake in the program. Mr. Childs spoke about the excitement and enjoyment it brings to him to have a quality program for kids and he is getting extremely busy with additional forthcoming locations. The Mayor and Council joined Mr. Thomas and Mr. Childs for a photo.

VI. Public Comments:
1. Ms. Jill Lucas stated she has problems with vehicles speeding on Campbellton Road and traffic backing up. She said from the eastbound side there is no turning signal, perhaps a four-way stop could be added.
2. Apostle Danita Jones had accolades for the Citizens Police Academy. She said Chief Mathis has put together a great program and a great team. The training she received in the Citizens Academy was phenomenal and that every citizen in Fairburn would benefit from this program. She further stated, "the police officers have computers and printers in their cars."
3. Mr. Eric Jones praised the Citizens Police Academy. He thanked the Mayor, Council and Chief Mathis for creating this program.
4. Mrs. Beatrice Doose stated she previously reported concerns regarding the Frankie Arnold Courtyard and Stage that was in dire need of repair. She was happy to report that some of her concerns had been fixed. She informed Mayor and Council and thanked Parks and Recreation Director, Ms. Chapin Payne. She stated Ms. Payne pressure washed the stage herself.

5. Ms. Daisy Brown stated she was proud of the work of Code Enforcement. The vacant lots in her neighborhood has been cleaned up and she can see.
6. Mrs. Michelle Blassingame stated she had concerns about her lot and when it rains the run-off that occurs in the ditch. She referenced lots 2 and 3 being the problem which are adjacent to her home. She previously spoke with Code Enforcement (before the department was under the supervision of Chief Mathis) regarding this problem. Mayor Carr-Hurst informed her to please speak with Chief Mathis tonight.
7. Ms. Cynthia Hodge spoke regarding a notice that was on her door regarding a zoning issue. She stated she moved to Fairburn because it was low crime and peaceful. Allowing additional homes could potentially pose a problem with crime. She further stated with low income housing this could reduce the property value of the homes in the area.
8. Ms. Sydnei Purchase stated she was a member of the Citizens Academy and the class was a great experience. She learned things to take back to her community. The ride-along was a real-life learning experience. The class taught them self-defense and she stated it would be beneficial for every Fairburn citizen to take this class.

VII. Adoption of the Council Agenda: All items were consent.

VIII. Adoption of the Consent Agenda Items: Agenda Items # 1, 2, 3, 4, 5, 6, 7, 8, 9 & 11 were consent items. Item # 10 was removed from the agenda and will be placed on the August 26, 2019 agenda. Motion to approve consent agenda items was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Davis. Vote: (5-0) Motion Carried.

1. **Office of the City Clerk** Ms. Shana T. Moss
   For Mayor and Council to approve individual appointees to the City of Fairburn's Ethics Board.

2. **Office of the City Clerk** Ms. Shana T. Moss
   Fulton County Department of Registration & Elections. For Mayor and Council to approve an Ordinance authorizing Fulton County to conduct the city's election for three council seats on November 5th, 2019.

3. **Planning and Zoning/Community Development** Ms. Tarika Peeks
   For the Mayor and Council to approve a boundary line agreement for city owned property on Cemetery Street and Washington Street.

4. Community Development Mr. Lester Thompson
   Approval of Task Order # 1 with Pond and Company for Professional Engineering and Landscape Architectural Services.

5. Community Development Mr. Lester Thompson
   Approval of Condemnation of Parcel 7 on Howell Avenue Extension Project. For Mayor and Council to approve condemnation of Parcel 7 Greenland (Georgia) Inc. on the Howell Avenue Extension Project.

6. Utility (Water & Sewer) Mr. Lee Hauesler
   Approval of Task Order # 136 with Integrated Science and Engineering for 2019-2020 NPDES Phases 1 Compliance Activities.

7. Utilities (Water & Sewer) Mr. Lee Hauesler
   Approval of Task Order # 137 with Integrated Science and Engineering for Impaired Water

Sampling for 2019-2020.

8. Utility (Water & Sewer) Mr. Lee Hauesler
   Approval of Task Order # 138 with Integrated Science and Engineering fro NPDES Phase 1-SWMP Development.

9. Police Department Chief Stoney Mathis
   For Mayor and Council to approve the Police Department's request to reduce the speed limit on Gullatt Road from 35 mph to a posted speed of 25 mph for the safety of pedestrians and vehicles.

10. Removed from the agenda. This item will be heard at the August 26, 2019 meeting.

11. Office of the Mayor. Mayor Elizabeth Carr-Hurst
    Ninety-day Moratorium on Extended Stay Residential Facilities or other similar accommodations on Georgia Highway 74.

IX. Adoption of City Council Minutes: (July 22, 2019). Minutes were not adopted due to Councilwoman Portis-Jones requesting the word "contextual" be added to her council comments. Also, she wanted the last sentence of her statements included in the minutes. Also, Mayor Pro-Tem Davis and Councilman Heath stated the word "taken" (not take) should be added in the fourth line under the public comments for Mr. Alexander Doose. Minutes were held for corrections to be made and to relisten to the recording of the meeting.

X. Public Hearing:
Planning and Zoning Ms. Tarika Peeks
Rezoning 19RZ-006-South Fulton, LLC. For the Mayor and Council to review a petition to allow the development of single-family residential subdivision. City Planner, Ms. Tarika Peeks presented the rezoning petition to Mayor and Council. To rezone 34.24 acres along Fayetteville Road from AG-1 (Agricultural District) and R-1 (Single-family Residential District) to R-3 (Single-family Residential District) to allow the development of a 54-lot single-family subdivision. Attorney Michelle Battle representing the applicant, South Fulton, LLC. Ms. Battle stated the price range of the homes would be in the mid 300 thousand with lots sizes of 50x50 although some of the lots might be smaller. A builder has not been selected. Mayor Carr-Hurst stated from the renderings presented in their packets these homes are not representative of the cost.
In Favor of Rezoning: No additional speakers.

In Opposition of Rezoning:
Ms. Cynthia Hodge stated she moved to the area because it was quiet, reserved and not a lot of traffic. She enjoys residing in the Trotter Farm Area and having this new development could potentially increase crime(s) in the area. She asked Mayor and Council to deny this request.

Ms. Shelia Paulson stated she had not been notified of the rezoning. She and her family have over 10 acres that is in the middle of the proposed zoning. She would like to obtain more information and asked Mayor and Council to deny this request.

Applicant's Rebuttal:
Mr. Daniel Fields of South Fulton, LLC joined Attorney Battle and stated the lot sizes would be comparable to the lot sizes at Trotter Farm Estates. With no further comments Mayor Carr-Hurst

closed the public hearing and asked council for a motion to approve or deny. The motion to approve was made by Councilman Heath and the second was provided by Mayor Pro-Tem Davis.

Vote: 5-0 Motion Carried.

XI. Agenda Items:
All agenda items were on the consent agenda except item #10. This item will be removed and placed on the August 26, 2019 agenda.

XII. Council Comments — Councilmembers

Councilman Whitmore offered congratulatory wishes to the Fairburn Youth for winning the state championship and their great win at the national level. He congratulated Mr. John Childs with his esteemed Mental Fitness Program. He further stated we are honored to have his esteemed program here in Fairburn.

Councilman Heath had no comment.

Mayor Pro-Tem Davis congratulated the Park and Recreation Department on their great wins. She said she is excited about all of the great things that are happening in Fairburn.

Councilman Pallend had no comment.

Councilwoman Hattie Portis-Jones gave congratulatory wishes to Ms. Chapin Payne. She said Ms. Payne came to Fairburn with ideas, energy and creativity. She said Ms. Payne's name comes up often regarding Fairburn. She offered super congratulations to the track team. She is proud of Mr. John Childs and his acceleration and congratulations to Chief Mathis and his team with the great work of the citizens academy. Lastly, all council should take the Citizens Academy program.

Mayor Carr-Hurst had no comment.

XIII. Executive Session: None

XIV. Adjournment: With no further business of the City of Fairburn at 8:09 pm Councilman Whitmore made the motion to adjourn and the second was provided by Councilman Heath.

CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF TASK ORDER #1 WITH MORELAND ALTOBELLI FOR CONSTRUCTION ENGINEERING & INSPECTION SERVICES ON THE ROADWAY IMPROVEMENTS ON VARIOUS CITY ROADS PROJECT (19-002)

( ) AGREEMENT	( ) POLICY / DISCUSSION	( ) CONTRACT
( ) ORDINANCE	( ) RESOLUTION	(X) OTHER

Submitted: 08/15/2018 **Work Session: 08/26/2019** **Council Meeting: 08/26/2019**

DEPARTMENT: Engineering

BUDGET IMPACT: The budget impact of this task order will be $23,000. The proposed expenditures will come out of the TSPLOST R & M-Maintenance & Safety Account (360-0000-52-2200).

PUBLIC HEARING? ( ) Yes (X) No

PURPOSE: For Mayor and Council to approve Task Order #1 with Moreland Altobelli for Construction Engineering & Inspection Services on the Roadway Improvements on Various City Roads Project (19-002).

HISTORY: The City of Fairburn entered into a Professional Services Agreement with Moreland Altobelli Associates, LLC on July 22nd, 2019 for On-Call Construction Management Services.

FACTS AND ISSUES: The agreement with Moreland Altobelli was approved with the understanding that task orders associated with CDBG, LMIG, TSPLOST and other specialty projects would be issued on an as need basis. As such, the attached task order for Construction Engineering & Inspection Services on the Roadway Improvement on Various City Roads Project (19-002) has been provided for review and consideration.

RECOMMENDED ACTION: Staff recommends that the City Council approve Task Order #1 with Moreland Altobelli Associates, LLC for Construction Engineering & Inspection Services on the Roadway Improvements on Various City Roads Project (19-002) and authorize the Mayor to sign the Task Order for an amount not to exceed $23,000.

Elizabeth Carr-Hurst

Elizabeth Carr-Hurst, Mayor

CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF TASK ORDER #1 WITH MORELAND ALTOBELLI FOR CONSTRUCTION ENGINEERING & INSPECTION SERVICES ON THE ROADWAY IMPROVEMENTS ON VARIOUS CITY ROADS PROJECT (19-002)

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( ) ORDINANCE	( ) RESOLUTION	(X) OTHER

Submitted: 08/15/2018 **Work Session: 08/26/2019** **Council Meeting: 08/26/2019**

DEPARTMENT: Engineering

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RECOMMENDED ACTION: Staff recommends that the City Council approve Task Order #1 with Moreland Altobelli Associates, LLC for Construction Engineering & Inspection Services on the Roadway Improvements on Various City Roads Project (19-002) and authorize the Mayor to sign the Task Order for an amount not to exceed $23,000.

Elizabeth Carr-Hurst

Elizabeth Carr-Hurst, Mayor

City of Fairburn

July 26, 2019

Mr. Buddy Gratton, PE
President
Moreland Altobelli Associates, LLC
2450 Commerce Avenue, Suite 100
Duluth, Georgia 30096

Re: Notice of Award - **RFP# 19-003 – On-Call Construction Management Services**

The City has considered the proposal submitted by your firm for the above described work in response to its Request for Proposal (RFP) dated June 14, 2019.

You are hereby notified that your proposal has been accepted for services outlined in the Scope of Services provided and will be further detailed and outlined in each task order developed for work assigned.

Attached is a copy of a proposed agreement for consideration. It is imperative that this agreement be finalized for approval within the next two weeks. So, please expedite any legal review and approvals necessary.

You are required to return acknowledged copies of this Notice of Award to the Owner within five (5) days of receipt of these documents.

Sincerely,

Lester Thompson, Deputy Director Community Development/Public Works

ACCEPTANCE OF NOTICE
Receipt of the Notice of Award is hereby acknowledged by:

Moreland Altobelli Associates, LLC

Buddy Gratton, PE
President

8/13/19
Date

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this 22nd day of July 2019 by and between **MORELAND ALTOBELLI ASSOCIATES, LLC**, a Limited Liability Company ("Contractor") and THE CITY OF FAIRBURN, a municipality incorporated in the State of Georgia ("City").

Recitals:

A. The City desires to secure professional service associated with the management of the construction of several improvement projects (the "Project").

B. The City has selected Contractor to perform certain Professional Services in connection with the Project, as more specifically set forth below.

C. The City and Contractor desire to enter into this Agreement to set forth the terms and conditions of the services to be provided by Contractor.

D. The City has established the necessary funding for the project through a combination of local, state, and federal funds.

NOW, THEREFORE, in consideration of the matters recited above, the mutual covenants set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.

2. Services by Contractor. Contractor shall perform the following services as directed by the City, or its designee, and in compliance with requirements of the proposal dated June 14, 2019, and approved by City Council on July 22, 2019:

(a) Perform the Professional Services as indicated on the Request for Proposal dated June 14, 2019 (Attachment 1);

(b) Compile or provide the necessary database of information to complete the scope of work;

(c) Keep the City, or its appointee, informed and apprised as to the status of progress by way of regular status reports;

(d) Coordinate with the City staff and any stakeholders in the performance of all of Contractor's services;

(e) Prepare and maintain files and records in compliance with requirements of the City and Georgia Open Records Act.

3. Contractor's Compensation. For the services to be performed by Contractor described in Section 2 hereof, Contractor will be compensated by the City as outlined on Attachment 2 – Fee Proposal. Payments will be due as follows:

(a) Payment for services rendered will be invoiced monthly and due 30 days after receipt by the City;

(b) Payment for reimbursable and hourly expenses may be invoiced on demand and will be due 30 days after receipt by the City;

No expenses of Contractor shall be reimbursable by the City unless approved in advance in writing by the City. Any additional services, not enumerated in this Agreement or its attachments, which might be required will be outside the scope of this agreement unless mutually agreed by City and Contractor.

4. Contractor's Duties. Contractor shall perform all services required hereunder in a professional manner, adhering to the requirements of Georgia law and standard policies and procedures. Contractor shall be solely responsible for obtaining and maintaining all licenses, if any, required under applicable laws, rules and ordinances necessary for the performance of its services described herein. Contractor shall keep the City and its project manager informed (on at least a weekly basis through informal meetings and correspondence) as to the status of the Project.

4.1 *Contractor Personnel.* Contractor acknowledges that the City selected Contractor for the Project because of the knowledge and experience of certain of Contractor's personnel. Contractor agrees that it shall use experienced and qualified individuals for the performance of each of Contractor's duties and obligations hereunder.

5. City's Responsibilities. The City and its agents shall endeavor to perform the following in a timely manner in order to facilitate Contractor's performance of its services required hereunder:

(a) Furnish plans, surveys, and/or plats of the parcels of property or studies in its possession needed for the Project;

(b) Coordinate with the Contractor in establishing a working relationship with the local government agencies and stakeholders;

(c) Establish procedures and guidelines for responding quickly to requests for information and documentation;

(d) Coordinate with the Contractor in establishing a management and coordination process to facilitate effective communication and coordination among the City, its agents and professionals, and the Contractor.

6. Duration and Termination. This Agreement shall remain in effect until July 22, 2022, unless terminated earlier in accordance herewith. The City may terminate this Agreement for any reason whatsoever upon ten (10) days advance notice to Contractor. In the event of such

termination by the City, the City shall compensate Contractor for all services performed up to the date of termination, and the City shall have no further liability to Contractor, including without limitation, no liability for lost profits. Contractor shall deliver to the City all "work in progress" including, but not limited to, drafts of documents, contact information and status of negotiations. Notwithstanding the foregoing, the City may terminate this Agreement immediately, with or without notice, in the event that Contractor defaults with respect to any of its obligations hereunder.

7. Status. Contractor is, as to the City, an independent contractor and is not nor shall Contractor be deemed to be an employee or agent (except as set forth below) of the City for any purpose whatsoever and nothing contained herein shall be deemed to constitute a contract of employment. In furtherance of the foregoing, Contractor acknowledges that: (a) it is not an employee of the City, (b) it will be working for the City on a temporary basis, (c) the City is not responsible for paying to Contractor or on Contractor's behalf any income tax withholding, unemployment taxes or compensation, workers' compensation premiums or benefits, health insurance premiums or benefits, or any other employment benefits, (d) it is ineligible to participate in, or receive anything from, any City benefit program. Notwithstanding the foregoing, Contractor shall act in the City's behalf for the specific land acquisition activities related herein and Contractor shall only act on the specific instructions and agreements with the City.

8. Insurance and Indemnity. Contractor shall maintain a policy of comprehensive general liability insurance in the combined single limit of at least $1,000,000 to cover any claims arising out of the performance of the services under this Agreement. Contractor shall indemnify, hold harmless and defend the City from any and all claims, charges, lawsuits and liabilities arising out of or relating to any act or omission of Contractor or its agents.

9. Assignability. The City is entering into this Agreement in reliance upon the particular qualifications of Contractor to perform the services herein described. This Agreement may not be delegated or assigned by Contractor and any purported delegation or assignment by Contractor of this Agreement (or rights hereunder) is void unless Contractor has first obtained the prior written consent of the City which consent may be withheld for any reason or no reason. The City may assign this Agreement, in its discretion, to other local government(s) or state agencies with authority for public right of way issues within its jurisdiction.

10. Confidentiality. Except as required by law or by court order, Contractor shall not disclose any information related to the negotiations or agreements with Landowners or related to the performance of its services for the City without the prior written consent of the City.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth opposite their signatures below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by facsimile, with written confirmation by a nationally recognized overnight courier sent the same day as the facsimile, in which case notice shall be deemed delivered upon receipt of confirmation transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or

personal delivery and delivered after 5:00 p.m. eastern standard time shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

12. Miscellaneous. This Agreement shall not be modified or amended except by written instrument signed by each of the parties hereto. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in and be of full force and effect, but without giving effect to such unenforceable provision. Time is of the essence hereof. The section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

[Signature page follows]

IN WITNESS WHEREOF, City and Contractor have set their hands and seals hereto as of the day and year indicated next to their signatures.

CONTRACTOR:

Address:

Moreland Altobelli Associates, ~~Inc.~~ LLC
2450 Commence Avenue, Suite 100
Duluth, GA 30096

MORELAND ALTOBELLI ASSOCIATES, LLC, a Limited liability company. Incorporated in Delaware on November 1, 2017, as a subsidiary of Atlas Technical Consultants.

Date signed by Contractor:

August 13, 2019

By: ______________________
President

[CORPORATE SEAL]

CITY:

Address:
City of Fairburn
56 Malone St., SW
Fairburn, GA 30213

THE CITY OF FAIRBURN, a municipality incorporated in the State of Georgia

By: ______________________

Mayor: Elizabeth Carr-Hurst

Date signed by City:

July 22nd, 2019

Attest: ______________________

Interim City Clerk: Shana T. Moss

Approved as to form:

____

City Attorney: William Randy Turner

[SEAL]

To:	City of Fairburn P.O. Box 145 Fairburn, Georgia 30213	Date: From: Copy to:	August 14, 2019 Chris Parypinski Buddy Gratton
Attn:	Mr. Lester Thompson, MPA		
Project:	Roadway Improvements on Various City Roads, Project Number 19-002		
TO No.:	1		

Scope of Work: Provide Construction Engineering and Inspections Services to monitor the resurfacing work on Project Number 19-002

BACKGROUND INFORMATION

Moreland Altobelli Associates, LLC. has prepared this Task Order (TO) in accordance with our Master Services Agreement dated July22, 2019. This task order has been prepared to assist the City of Fairburn with Construction Management Services. The services proposed will better enable the City to complete the project on time, within budget, and meet the project-specific objectives outlined in the scope of services described below. Accordingly, the City will be able to focus its efforts on more strategic goals.

Task 1 – Construction, Engineering and Inspection Services

- Provide inspection services for the resurfacing, milling, patching, striping, and structure adjustments of the approved roads in the contract with ShepCo Paving, Inc. for Project Number 19-002
- Provide engineering services to address contractor initiated RFI's.
- Provide engineering services to review contractor pay submittals.

The total not to exceed budget of $23,000.00 as outlined in the attached fee proposal includes staff time and expenses necessary to perform the scope of work outlined above.

If the City requires additional services, Moreland Altobelli Associates, LLC. will provide those services in accordance with the existing Unit Rates agreed to with the City. A scope and budget for additional services would be prepared for City approval prior to performing the work.

MORELAND ALTOBELLI
— AN ATLAS COMPANY —

Authorization:

As our authorization to proceed with the scope of work, schedule and fee structure outlined herein, please sign in the space provided below and return one copy to Moreland Altobelli Associates LLC. for our records.

Authorized by: ______________________ Title: **Mayor**

Print Name: **Elizabeth Carr-Hurst** Date: ______________________

2450 COMMERCE AVENUE, SUITE 100, DULUTH, GA 30096-8910
770.263.5945 | F 770.263.0166 | maai.net

August 14, 2019

Moreland Altobelli Associates, Inc.

ROADWAY IMPROVEMENTS ON VARIOUS CITY ROADS - PROJECT NUMBER 19-002

CEI Services

City of Fairburn

PERSONNEL COSTS:	EST HRS	RATE/HR	COST($)	
CONSTRUCTION ENGINEERING AND INSPECTION				
CONSTRUCTION SERVICES MGR	24	$125.00	$3,000	
SENIOR INSPECTOR	240	$75.00	$18,000	
		SUBTOTAL	**$21,000**	
DIRECT COSTS				
REPRODUCTION/PLOTTING				$0
TRAVEL AND MISC. DIRECT COSTS				$2,000
TOTAL DIRECT COSTS				$2,000
TOTAL COST				$23,000

CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT WITH CITY OF ATLANTA FOR THE DOWNTOWN LCI STREETSCAPE PROJECT

(X) AGREEMENT	( ) POLICY / DISCUSSION	( ) CONTRACT
( ) ORDINANCE	( ) RESOLUTION	( ) OTHER

Submitted: 08/16/2019 **Work Session: 08/26/2019** **Council Meeting: 08/26/2019**

DEPARTMENT: Engineering

BUDGET IMPACT: The budget impact of the proposed Intergovernmental Agreement is an increase of approximately $464,300.00 in project funding. The funds will be allocated to the LCI Implementation Grant Account (250-4203-54-1403).

PUBLIC HEARING? ( ) Yes (X) No

PURPOSE: For Mayor and Council to approve an Intergovernmental Agreement (IGA) with the City of Atlanta on the Downtown LCI Streetscape Project.

HISTORY: The City of Atlanta has existing water facilities that present a utility conflict with the proposed improvements associated with the Downtown LCI Streetscape Project. In order to accommodate the Project and to expedite the relocation of the existing facilities, the City of Fairburn and the City of Atlanta desire to enter in an Intergovernmental Agreement. Atlanta will pay for the design and construction costs associated with the relocation of their water facilities. The City of Fairburn will competitively procure a Contractor for constructing the Project.

FACTS AND ISSUES: The proposed IGA is the means by which the agreement between the City of Fairburn and the City of Atlanta will be formalized.

RECOMMENDED ACTION: Staff recommends that Mayor and City Council to approve the Intergovernmental Agreement between the City of Atlanta and the City of Fairburn on the Downtown LCI Streetscape Project (#0012636 - SR 14; CS 4130-W Campbellton Road & CS 4050-Smith Street-LCI Improvements).

Elizabeth Carr-Hurst

Elizabeth Carr-Hurst, Mayor

INTERGOVERNMENTAL AGREEMENT
BETWEEN FULTON COUNTY, GEORGIA
AND THE CITY OF FAIRBURN, GEORGIA
FOR WASTEWATER SERVICES

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is executed as of ____ day of __________, 2019, by and between **THE CITY OF FAIRBURN, GEORGIA** ("Fairburn"), a municipality of the State of Georgia, and **FULTON COUNTY GEORGIA** ("Fulton County"), a political subdivision of the State of Georgia. The term "Party" refers individually to either Fairburn or Fulton County and the term "Parties" refers to both Fairburn and Fulton County.

WHEREAS, each of the parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of sewerage in its respective jurisdiction to serve its citizens; and

WHEREAS, Fulton owns and operates the Camp Creek Water Reclamation Facility, hereinafter referred to as "Camp Creek"; and

WHEREAS, Fulton has replaced, expanded and upgraded Camp Creek up to 24 MGD to improve its operational efficiency and reliability; and

WHEREAS, the Georgia Department of Natural Resources, Environmental Protection Division has mandated that watershed assessment and planning be conducted to support environmental regulatory action on wastewater discharges; and

WHEREAS, the Constitution of the State of Georgia provides, in Article IX, Section III, Paragraph I, Subparagraph I, Subparagraph (a), that any county or municipality of the State of Georgia may contract for any period not exceeding 50 years, with each other or with any other public agency, public corporation, or public authority for the provision of services, or for the joint or separate use of facilities or equipment when such contracts deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

WHEREAS, both parties agree that it is in their mutual interests to work cooperatively on wastewater management and watershed management in the Camp Creek service area and agree that the environmental management of the common watershed can be enhanced through regional cooperation; and

WHEREAS, the terms of this Agreement are intended to address the long term needs related to wastewater management; and

WHEREAS, the parties wish to set terms and conditions and provide procedures for the current and future use of Camp Creek and future capital improvements to the System, and to agree upon methods of determining and sharing current and future costs of capital improvements and operation and maintenance.

WHEREAS, this IGA is entered into with the understanding by the Parties that the primary purpose of this IGA is for the Parties to meet the public purpose of setting terms and conditions and providing procedures for the current and future use of Camp Creek and future capital improvements to the System (as defined herein), and to agree upon methods of determining and sharing current and future costs of capital improvements and operation and maintenance.

NOW THEREFORE, incorporating the foregoing recitals, and in consideration of the mutual promises, covenants and undertakings of the parties hereinafter set forth, and for the public purposes herein contained and provided for, the County and the City covenant, agree and bind themselves as follows:

ARTICLE 1
DEFINITIONS

In the construction of this Agreement, the following terms shall have the following meanings and shall be construed as required by the following provisions, unless inconsistent with the manifest intent of the text:

1.1 **APPLICABLE INTEREST RATE** The interest rate per annum shall be set at the rate of interest being charged on unpaid County taxes (See, Article 8.2).

1.2 **BUSINESS DAY** Each day excluding each Saturday, Sunday and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.

1.3 **CAPITAL IMPROVEMENTS** Those additions, replacements or improvements to the System, which, under generally accepted accounting principles or practices, are considered capital in nature, and which are made for the purpose of improving the System or expanding the capacity of the System.

1.4 **COLLECTION SYSTEM** A component of the System consisting of the sewer lines, storage, pump stations, and force mains which transport flows to a treatment facility or its influent pumping station.

1.5 **DATE OF EXECUTION** The date on which the last party to this Agreement executes this Agreement.

1.6 **DESIGN CAPACITY** Flow capacity in million gallons per day (MGD) of a particular water pollution control or reclamation facility as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, which must be certified by an engineer licensed to practice in the State of Georgia, expressed as average daily flow, maximum month [average daily] flow, and peak wet weather flow; provided, however, as to any facility for which a permit from a regulatory body as to its maximum flow capacity is required, the "Design Capacity" of such facility shall not exceed such maximum permitted flow capacity.

1.7 **CITY ADMINISTRATOR** The City Administrator of the City of Fairburn, or whoever shall in the future perform those functions relative to this Agreement.

1.8 **DIRECTOR OF PUBLIC WORKS** The Director of Public Works of Fulton, or whoever shall in the future perform those functions relative to this Agreement.

1.9 **GOVERNING AUTHORITY** As applicable, the City Council of the City of Fairburn, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.

1.10 **NPDES PERMIT** National Pollution Discharge Elimination System Permit.

1.11 **PROJECT** Any project consisting of capital improvements to the System undertaken pursuant to this Agreement.

1.12 **PROJECT COSTS** Any and all costs and expenses of a Project, including, without limitation, the costs of planning, design, engineering, architectural, and construction of the Project, the costs of plans and specifications, the costs necessary or incident to determining the feasibility or practicality of the Project, the costs of acquiring or condemning all lands, properties, rights, and easements acquired for the Project, the costs of all buildings, machinery and equipment included in the Project, the costs of insurance, financing charges and interest as applicable, the costs of compliance with environmental regulations and environmental protection, the costs of re-rating any facility, the costs of project construction management and construction engineering, administrative costs, legal fees and expenses, and such other costs as may be necessary or incident to the construction and equipping of the Project, and the placing of the Project in operation; provided, however, "Project Costs" shall not include any operating cost (as accepted by industry standard), any repair or routine maintenance cost, or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of the Constructing Party or such party's agent.

1.13 **RATES** Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Fulton. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale, inclusive of a capital component and operation and maintenance component based on no contribution to the System ["Capital O&M"]; and (3) wholesale, without a capital component and with operation and maintenance based on a capital contribution to the System ["O&M"]. Whenever Fulton deems it necessary to revise its rates, Fulton shall notify Fairburn in writing of the pending rate increase not less than thirty (30) days prior to submittal of such revised rates to Fulton's Governing Authority for approval. Upon approval of such rates, Fulton shall notify Fairburn in writing by the first to occur: (a) thirty (30) days after such approval by the respective Governing Authority or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Fulton's sole authority to revise its rates. All documentation used in the cost of service studies shall be available to Fairburn within ten (10) Business Days of written request therefor [Note: Current Fulton Wastewater rates are: (retail) $6.38 per 1,000 gallons; (capital/O&M) $4.44 per 1,000 gallons; (O&M) $1.83 per 1,000 gallons].

1.14 **RESERVED CAPACITY** The quantity of flow expressed as million gallons per day or thousand gallons per day purchased and allocated for use by Fairburn of a particular water pollution control or reclamation facility or Project operated by Fulton as determined by a percentage of total permitted capacity of Camp Creek.

1.15 **REQUIRED FINANCIAL CONTRIBUTION.** The dollar amount payable by Fairburn with respect to each Project undertaken pursuant to this Agreement equal to (a) the sum of the Total Project Cost for the Project minus the total amount of all state and federal funds , (b} multiplied by Fairburn's Required Financial Contribution Percent.

1.16 **REQUIRED FINANCIAL CONTRIBUTION PERCENT** The applicable percent specified in Article 2.1 or in an amendment to this Agreement for the applicable Project, or if no percent is so specified for any future capital improvement to an existing facility for which a Reserved Capacity is specified in this Agreement, the percent which such Reserved Capacity is to the Design Capacity of such facility.

1.17 **SEWERAGE SYSTEM or SEWER SYSTEM** The physical system of sewers, pumping stations, force mains, storage and treatment facilities by which Fairburn and Fulton collect, convey, treat and discharge wastewater within the Camp Creek service area.

1.18 **TOTAL PROJECT COST** The aggregate dollar amount of all Project Costs of a Project undertaken pursuant to this Agreement.

ARTICLE 2
PAST/CURRENT CAPITAL IMPROVEMENTS OF FULTON

2.1 FAIRBURN'S REQUIRED FINANCIAL CONTRIBUTION The parties agree that Fairburn's Required Financial Contribution Percent for the Project has met its current financial contribution.

2.2 METHOD OF PAYMENT BY FAIRBURN FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR REPLACEMENT OF CAMP CREEK
The parties agree that Fairburn's has currently met its Required Financial Contribution for Camp Creek which was equal to (a) the sum of the applicable Total Project Cost minus the total of all state and federal funds received or to be received for the respective Project (b) multiplied by the respective Required Financial Contribution Percent set forth in Article 2.1.

ARTICLE 3
FUTURE CAPITAL IMPROVEMENTS OF FULTON

3.1 DETERMINATION TO MAKE FUTURE CAPITAL IMPROVEMENTS
Fulton may make necessary Capital Improvements to the Sewerage System from time to time, subject to approval by appropriate state or federal regulatory agencies, if excessive water loads or flows are impairing the efficient operation of the System, if additional capacity is required, if such improvements are necessary to comply with the regulations or requirements of agencies of the

State of Georgia, and/or agencies of the federal government, or if improved processes are available and the additions of said processes are necessary or desirable to provide operations which are more efficient and economical. Fairburn agrees that the determination to make capital improvements for any one or more of the reasons aforementioned shall be made by Fulton. For the purpose of long-range planning, the parties, acting by and through the Fairburn Director of Public Works and the Fulton Director of Public Works, shall meet at least annually or more frequently as deemed necessary to determine whether additional capacity to serve both jurisdictions will be required, necessary, or desirable, for any facility which is part of the Sewerage System. The parties agree that any such meeting will be held within thirty (30) days of a written request therefor from either party.

3.2 NOTICE AND METHOD OF PAYMENT Upon the determination that Capital Improvements to the Sewerage System are necessary, desirable or appropriate pursuant to Article 3.1, Fulton shall provide written notice to Fairburn of such determination, which notice also shall include Fulton's current estimate of the Total Project Cost of the Project and its calculation of the Required Financial Contribution from Fairburn for such Project. Fairburn shall respond in writing acknowledging such notice within 30 days after the date such notice is received. Also, within at least 90 days prior to scheduled award of any Project contract, Fairburn shall deposit its Required Financial Contribution in lump sum with Fulton County. During the course of the Project's construction and upon completion of the Project, adjustments to the estimated Total Project Cost shall be made in accordance with Articles 4.2 and 4.3.

ARTICLE 4
PAYMENTS AND OWNERSHIP

4.1 FAILURE TO RESPOND In the event Fairburn fails to comply with Articles 2 and 3 of this Agreement, such failure shall be deemed a material breach of this Agreement and all remedies set forth in this Agreement, including the provisions of Article 4.3 (interest), shall be available to Fulton.

4.2 ADJUSTMENT OF PAYMENTS Fairburn and Fulton agree that the calculation of the Total Project Cost for future Capital Improvements and Fairburn's Required Financial Contribution with respect thereto are estimates, and that circumstances may arise that cause a change to such estimates. In such event, Fulton shall notify Fairburn in writing of the change of the estimated Total Project Cost amount and the change of its Required Financial Contribution as a result, and Fairburn shall pay its Required Financial Contribution with respect to any such increase of the estimated Total project Cost within sixty (60) days of receipt of notice of such change by lump sum to Fulton County. After (a) Fulton initiates any capital improvement pursuant to this Agreement has certified that construction of the Project has been completed in accordance with approved plans and specifications, (b) final payment of all federal or state grant money due Fulton, if any, (c) final payment to the construction contractor(s) and resolution of any appropriate construction claims (excluding claims stemming from a negligent or intentional act or omission of Fulton), and (d) Fulton has determined the final Total Project Cost of the Project, then the mathematical adjustment of the total Required Financial Contribution payable by Fairburn shall be made. Any payment required from either party as a result of such adjustment of the total Required

Financial Contribution shall be made by such party within 60 days of receipt of notice of the final Total Project Cost and shall be made in accordance with Article 2.2.

4.3 FAILURE TO PAY WHEN DUE In the event of any failure to pay when due any amount due under this Agreement, interest shall automatically accrue on such delinquent amount in accordance with Articles 1.1 and 8.2, from the date such payment is due until full payment of such delinquent amount and accrued interest thereon is made.

4.4 OWNERSHIP OF SYSTEM Fairburn agrees that the payment of its Required Financial Contribution for any current or future Project undertaken pursuant to this Agreement and payment of the rates assessed for its flow through Camp Creek constitutes consideration paid for Fairburn's contractual right to use Camp Creek in the amount of its Reserved Capacity therein, and does not constitute consideration paid for any ownership right, ownership interest, indicia of ownership or other property right in Camp Creek. Fairburn's use of Camp Creek in the amount of its Reserved Capacity specified herein shall not constitute and transfer of any ownership rights, ownership interests or other property rights in Camp Creek.

ARTICLE 5
USE OF FACILITIES

5.1 FAIRBURN'S RIGHT TO USE OF CAMP CREEK

5.1.1 EXISTING FACILITY. Subject to Article 2.2 of this Agreement, Fairburn's Reserved Capacity in Camp Creek 1.50 mgd with respect to Camp Creek, rated at 24 mgd.

5.1.2 FUTURE FACILITY. As addressed in Article 2.1 above, Fairburn shall retain the same 1.50 mgd Reserved Capacity. Fairburn's payment of its Required Financial Contribution for the total cost of projects undertaken pursuant to Articles 3 and 4 hereof, and Fairburn's timely payment of applicable treatment rates (currently $1.83 per 1,000 gallons) for its use of Camp Creek pursuant to this Agreement will entitle Fairburn to discharge in the future no more than the following respective Reserved Capacity of flow to Camp Creek:

Camp Creek Facility

	Design Capacity (MGD}	Fairburn's Reserved Capacity Percent	Fairburn's Reserved Capacity (MGD)
Maximum Month Daily Flow	24	4.167%	1.0
Peak Wet Weather Flow	60	2.5%	1.0

5.1.3 RE-RATING OF RESERVED CAPACITY. The percentage of reserved capacity allocated to Fairburn for the Camp Creek facility may not be increased or decreased except by amendment of this Agreement. Notwithstanding the provisions of Article 5.1.2, in the event that reserved capacity of the Camp Creek facility is re-rated through orders; permits or other federal or state regulatory requirements, Fairburn's percentage of reserved capacity will remain unchanged, but the actual reserve capacity will be increased or decreased proportionally. An amendment to this agreement shall be implemented to reflect such re-rating.

5.2. DETERMINATION AND PAYMENT OF APPLICABLE RATES Fairburn agrees to pay for its flow usage at an established rate (currently $1.83 per 1,000 gallons) that reflects the cost of service being provided as established and revised from time to time in accordance with Article 1.14. Said rate for flows exceeding the Reserved Capacity, for future flows only, shall be at the wholesale rate (currently $4.44 per 1,000 gallons) inclusive of a capital component (based on no previous capital contribution to the system; O&M/capital). Payments shall be due within thirty days of receipt of such billing.

5.3 DETERMINATION OF FLOWS The basis for billing shall be metered flow volumes wherever possible, see Exhibit A. Meters shall be calibrated no less often than quarterly, and appropriate calibration records shall be retained. Fairburn shall have the opportunity to observe the calibration process, test the calibration equipment and review the calibration records of Fulton upon written request. Any meter tested and found to be accurate within ten percent shall be considered accurate for billing purposes. Where metering stations are not feasible or a dispute arises with respect to the accuracy or appropriateness of metering results, Fairburn's Director of Public Works and the Fulton's Director of Public Works will attempt to resolve the dispute in good faith, in the first instance, before seeking other options that may be available to the parties.

5.4 PROVISION OF DATA Both parties agree to provide flow data, or, if flow is not metered, water consumption within the service area and population data to the other as may be reasonably requested in writing by the other party within ten (10) business days following receipt of each such request.

5.5 CHANGES IN CAPACITY Fairburn may request additional Reserved Capacity in Camp Creek. Any increase of Reserved Capacity shall require the adjustment of the Required Financial Contribution Percent for the Total Project Cost of any future capital improvements to such facility. The percentage of Reserved Capacity and the parallel Required Financial Contribution Percent may not, however, be increased or decreased except by formal written amendment of this Agreement.

5.6 FUTURE EXCESS FLOW When the average daily flow received from Fairburn to Camp Creek based on a 60 day reporting period reaches 80% of the Reserved Capacity for such facility, Fairburn must prepare and submit to Fulton a written plan which demonstrates how future flows will be maintained within the Reserved Capacity. Should Fairburn's flow received at Camp Creek exceed its then-current Reserved Capacity, Fairburn shall immediately take appropriate measures to reduce its flow to within its Reserved Capacity. Continued discharge in excess of the Reserved Capacity, without prior written approval by Fulton, calculated as a daily average over 60 days time, will be considered a material breach of contract, for which Fulton is entitled to the one or more of the following remedies, none of which shall be an exclusive remedy: (a) immediate payment of the applicable rate set forth in Article 5.2 with respect to the Reserved Capacity flow and the flow in excess of the Reserved Capacity plus a surcharge rate equal to 25% of the then current rate applicable to the excess flow, (b) payment (or reimbursement) of any and all damages claimed by third parties directly related to such excess flow, (c) immediate payment (or reimbursement) of any and all civil penalties and fines imposed by regulatory agencies or courts of law directly attributed to such excess flow, (d) interest on any aforesaid amount not paid when due pursuant hereto at the Applicable Interest Rate calculated in accordance with Article 8.2, and (e) any and all other remedies available at law or in equity. Any amount payable pursuant to this Article 5.6 shall be paid by Fairburn within fifteen (15) days following written demand therefor. The obligation to pay the applicable rate plus surcharge shall arise in the event that Fairburn's flows to Camp Creek exceed those set forth in Article 5.1.2.

ARTICLE 6
COLLECTION SYSTEM

6.1 FULTON'S RIGHTS Fulton shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fulton.

6.2 FAIRBURN'S RIGHTS Fairburn shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fairburn.

6.3 CHARGES FOR COLLECTION Fairburn shall have the right to determine and impose charges for connections permitted or made to the Collection System within its sewer service boundaries. This right shall include the right to contract with other sewer service provider(s) for the use of the Sewerage System within its sewer service boundaries, provided that Fairburn shall not permit by contract the discharge of flow which will result in Fairburn's exceeding its maximum Reserved Capacity flow to Camp Creek as set forth in Article 5 hereof.

6.4 OPERATION AND MAINTENANCE Fulton and Fairburn shall be responsible for operations and maintenance of the collection systems located within their respective sewer service boundaries.

ARTICLE 7
SEWER USE ORDINANCES AND INDUSTRJAL PRETREATMENT PROGRAMS

7.1 RESPONSIBILITIES Each party will be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within its jurisdictional limits.

7.2 REVISIONS Fairburn will amend and/or revise its sewer use ordinance and industrial pretreatment program to comply with all state and federal requirements and will accept and implement reasonable changes to such ordinance and program requested in writing by Fulton with respect to control of discharges which ultimately will be treated at Camp Creek. When required for compliance with Fulton's NPDES permit, Fairburn will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Fulton.

7.3 ENFORCEMENT AND PERMITTING Fairburn agrees to diligently enforce its sewer use ordinance and industrial pretreatment program for users of its portion of the Sewerage System. Fairburn will issue permits to all industrial dischargers within its jurisdictional limits as required by the ordinance and pretreatment program and will monitor compliance with the permits. A written report of non-compliant discharges within Fairburn's jurisdiction tributary to Camp Creek will be provided by Fairburn if any such non-compliance occurs.

7.4 FAILURE TO ENFORCE. In the event Fairburn fails to take reasonable pretreatment enforcement action on a timely basis, Fulton may take any action authorized by law.

7.5 OTHER JURISDICTIONS Before an industrial user located outside the jurisdictional boundaries of Fairburn discharges wastewater into the Fulton sewer system for treatment at Camp Creek, Fairburn will enter into an agreement with the jurisdiction in which such industrial user is located. The terms of such agreement shall be substantially equivalent to the applicable terms of this Agreement, and such agreement must be fully executed agreement must be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

7.5 ANNUAL REPORTS Fairburn will submit a written annual report to Fulton on the compliance status of each significant industrial user and any enforcement response taken or anticipated. Each such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

7.6 EMERGENCY ACTION Fulton, acting as an agent of Fairburn, may take emergency action to stop or prevent any discharge into its sewer system for treatment at Camp Creek that is generated in, or transported through Fairburn, when in the reasonable opinion of Fulton such damage presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, or contamination to Fulton's System. Fulton agrees to provide such notice as is practicable to the sewer user and Fairburn of its intent to take emergency action prior to taking action; provided, however, it is understood and agreed the opportunity to respond to such action or anticipated action may be limited to a hearing after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

ARTICLE 8
PROVISIONS OF GENERAL APPLICATION

8.1 RIGHT TO SEEK SPECIFIC PERFORMANCE The parties agree that the costs and damages resulting from a breach of the contractual rights to use the Sewerage System facilities up to the specified amounts granted by this Agreement may not be susceptible of monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy and the provisions of Article 8.8 have been complied with, either party shall be entitled to specific performance or any other equitable remedies provided by law.

8.2 RATE OF INTEREST Whenever this Agreement provides for the accrual and payment of interest on sums to be paid by one party to the other, such interest shall be calculated at the Applicable Interest Rate or Rates as defined in Article 1.1 in effect during the period for which interest is due. Interest shall be calculated at the Applicable Interest Rate based upon the total number of calendar days during which the applicable amounts remain unpaid, including the original due date of the delinquent payment and excluding the day on which the amount (including accrued interest) is paid in full.

8.3 OPERATIONS REVIEW Both parties agree that, upon receipt by one party of a written request from the other party for an operations review, an operations review to determine the status of the operation, maintenance and personnel needs of any component of the Sewerage System, as well as the efficiency, management and reliability of cost-effectiveness of the operation of any component of the Sewerage System, shall be completed and a written report of such review and the resulting recommendations shall be delivered to the requesting party within ninety (90) days following receipt of the written request. The reasonable out-of-pocket costs of the operations review will be paid by the party requesting same. The recommendations of an operations review will not bind either party.

8.4 SEVERABILITY In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement shall be construed to adopt, but not to enlarge upon, all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provisions of said Constitution or laws, the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

8.5 WAIVER A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.

8.6 TERM OF AGREEMENT This Agreement shall be in effect and shall constitute a binding obligation of the parties hereto from and after its execution by the last party to execute same and shall continue in effect for fifty (50) years. The parties may agree to amend this IGA at any time.

8.7 PERIODIC REVIEW OF PROVISIONS The parties shall hold periodic reviews of the provisions of this Agreement in order to provide for the changing needs of both parties, and to insure the Sewerage System meets all applicable state and federal requirements, as they may be promulgated or amended. The parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both parties. However, nothing herein shall prevent either party from proposing amendments to the other at any time during the term of this Agreement.

8.8 NOTICE OF COMPLETION OF PROJECTS AND DETERMINATION OF FINAL COSTS Within one hundred and eighty (180) days of the completion of a Project and determination of final cost, Fulton will notify Fairburn of the completion and determination of final cost. Any overpayment or underpayment by Fairburn shall be settled in lump sum not more than sixty (60) days after providing such notice. All documents used in the notification of Project completion and determination of final cost shall be available to Fairburn within 10 business days of written request therefore.

8.9 RESOLUTION OF DISPUTES Should there arise any issues or disputes related to this Agreement, the parties will in good faith attempt to resolve such issues or disputes promptly and amicably, and may by mutual agreement submit same to non-binding mediation.

8.10 FIRE AND EXTENDED INSURANCE COVERAGE Fulton shall obtain and maintain fire and extended coverage, flood, vandalism, and malicious mischief insurance coverage for its capital assets and personally included in the Sewerage System, including boiler or pressure vessel explosion coverage and all other coverage reasonably necessary to adequately cover reasonably foreseeable risks, insuring the buildings' systems, equipment and other improvements and all additions, extensions, alterations and modification thereto in an amount equal to at least seventy-five (75) percent of the full replacement value thereof, as such value shall be determined from periodically by Fulton. The cost of such coverage shall be allocated to the insured facility.

8.11 DAMAGE OR DESTRUCTION OF FACILITIES In the event of damage or destruction by fire or other casualty of the Sewerage System, Fulton shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Any repair or rebuilding required hereunder shall be paid for with the proceeds of the insurance required under Article 8.10 and any remaining costs shall be paid by Fulton as the owner of the Camp Creek Plant.

8.12 PERSONAL LIABILITY No elected official, director, officer, or employee of either party shall be charged personally or held contractually liable by or lo the other party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

8.13 RESPONSIBILITY OF PARTIES FOR SEWERAGE SYSTEM Fairburn and Fulton shall be responsible for the maintenance, repair and operation of their respective components of the Sewerage System. Neither party nor a signatory to this Agreement shall be beneficiary of the rights and obligations thereunder.

8.14 TIME OF ESSENCE Time is of the essence for all terms of this Agreement.

8.15 HEADINGS The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

<u>8.16 ASSISTANCE</u> Fairburn and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Sewerage System.

<u>8.17 NUMBER OF ORIGINAL DOCUMENTS</u> It is agreed between the parties that this Agreement shall be executed in two or more originals, all of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.

<u>8.18 ASSIGNMENT OF AGREEMENT</u> This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any party hereto except with the consent in writing of the other party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a party hereto of any obligation hereunder.

<u>8.19 INTERGOVERNMENTAL AGREEMENT</u> The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section 111, Paragraph I of the Constitution of the State of Georgia of 1983.Fairburn shall pay its financial obligations under this Agreement in accordance with the provisions of this Agreement, whether or not a Project, or any part thereof, has been completed, is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction by offset and shall not be conditional upon the performance or non-performance by Fulton of any other agreement or any other condition whatever.

<u>8.20 DEFAULT</u> Failure of Fairburn to pay Fulton any of the payments required under this Agreement when due or failure of either party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such party. In any such event the non-defaulting party may, after complying with the provisions of Article 8.8, bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term or obligation of this Agreement against the other party.

<u>8.21 NOTICE</u> All notices given pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton County shall be addressed as follows, unless otherwise directed in writing:

County Manager
Government Center Tower
141 Pryor Street, Suite 10061
Atlanta, Georgia 30303

with a copy to the:

Director
Fulton County Department of Public Works Water Services Division
Government Center Tower 141 Pryor Street, Sixth Floor
Atlanta, Georgia 30303.

All notices to Fairburn shall be addressed as follows, unless otherwise directed in writing:

City Manager
City of Fairburn
56 Malone Street
Fairburn, Georgia 30213

With a copy to the:

Director of Public Works
City of Fairburn
56 Malone Street
Fairburn, Georgia 30213

8.22. PRIOR AGREEMENTS This Agreement supersedes any and all previous agreements between Fulton County and Fairburn. Under the existing agreement between the County and the City, said Agreement dated June 7, 2000, the City was authorized to utilize the County's Sewer System to transport and treat up to 250,000 gallons per day from the Town of Tyrone, Georgia, subject to certain conditions. Said authorization contemplated the City constructing and operating its own sewerage treatment facility which would have ultimately treated the wastewater generated from the Town of Tyrone. Paragraph V(C) if the Agreement required the City to obtain a performance bond payable to the County in the amount of $4,000,000.00, which bond was designated to compensate the County in the event that the City did not build a treatment facility. Pursuant to this Agreement, the County agrees to waive any such requirement and shall release, return, void, and cancel any such bond or obligations growing therefrom on behalf of the City; provided, however, that the City shall be allowed to continue to utilize the County's Sewer System to transport and treat up to 250,000 gallons per day from the Town of Tyrone. Any such amount shall be included in, and not in addition to, the capacity allocated to the City under Paragraph 1 of this Agreement.

8.23 ADDITIONAL UNDERSTANDINGS The Parties to this IGA have mutually acknowledged and agreed to the following:

a) The Parties shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of this IGA.

b) It is not the intent of this IGA to restrict the Parties to this IGA from their involvement or participation with any other public or private individuals, agencies or organizations.

c) It is not the intent or purpose of this IGA to create any rights, benefits and/or trust responsibilities by or between the Parties.

d) This IGA shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the IGA or keep in place any contract, except as specifically provided in this IGA.

8.24 TERMINATION Anything contained herein to the contrary notwithstanding, either Party may terminate the IGA:

1. If the other Party commits a material breach of the IGA and fails to cure said breach to the non-breaching Party's satisfaction after receiving thirty (30) days written notice; or

2. Without cause, if the terminating party gives ninety (90) days prior written notice to the other Party.

8.25 RESPONSIBILITY FOR CLAIMS AND LIABILITY It is hereby stipulated and agreed between the parties that, with respect to any claim or action brought by a third party and arising out of the activities described in this IGA or stems from any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations, each party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence actions or omissions of its own agents, officers, and employees. Either party may self-fund its obligations under this IGA. However, nothing herein shall be construed as a waiver of any party's sovereign immunity or the immunities available to the officials, officers and employees of the parties. Fairburn shall ensure that any contractor retained or selected by Fairburn to provide services related to the work contemplated in this agreement shall agree to indemnify and hold harmless Fulton County as well as Fulton County's commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which they or any of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, irrespective of Fulton County's negligence (except that no party shall be indemnified for their own sole negligence). Any contractor retained by Fairburn if requested, shall assume and defend at the contractor's own expense, any suit, action or other legal proceedings arising there from in which Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, are named as a party, and the contractor hereby agrees to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, arising there from. Fairburn shall ensure that the provisions of this Article are included in all contracts and subcontracts.

8.25 CONFIDENTIALITY Fairburn agrees to establish appropriate administrative, technical, and physical safeguards to ensure that it does not provide and make available confidentiality, protected, proprietary or privileged data regarding the System. Fairburn agrees to abide and comply with all applicable laws, rules and regulations relating to privacy and confidentiality of protected information.

8.26 REPRESENTATIONS REGARDING DATA Each Party has made its best efforts to ensure the accuracy and completeness of the information and data transferred or made available through the performance of the IGA. Each Party makes no warranties or representations to the public, to the other Party or to third parties regarding data made available through the performance of the IGA. It shall be the responsibility of each Party or any third party to verify the accuracy of data. Each Party to this IGA accepts no liability that may arise from the use of data by any person or any third party. All information is provided "as is" with no warrantee of any kind concerning fitness of use. No Party to this IGA shall be liable for the use of data or any inferences, judgments, or decisions resulting from use of data.

8.27 REVIEW OF ACTIVITIES Authorized representatives of Fulton County may at all reasonable times review and inspect the activities and data collected under the terms of this IGA and any amendments thereto, including but not limited to, all reports, drawings, studies, specifications, estimates, maps and computations prepared by or for Fairburn. Fairburn shall keep accurate records in a manner approved by Fulton County with regard to the activities conducted under this IGA and submit to Fulton County upon request, such information as is required in order to ensure compliance with this agreement.

8.28 MISCELLANEOUS

a) **Entire Agreement; Counterparts**. This IGA may be executed by the Parties in counterparts, each of which shall constitute an original. This IGA, including the attached exhibits, sets forth the entire understanding between the Parties pending the execution of the Agreement, and supersedes all previous agreements and understandings between them, oral or written, and may be amended only in a document executed by both Parties. No amendment, modification, termination, or waiver of any provision of this IGA, nor consent to any departure by the Parties, shall in any event be effective unless the same shall be in writing and signed by Fulton County and City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

b) **Governing Law**. This IGA and the Parties' rights and obligations hereunder, shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws rules.

c) **Limitation on liability**. No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this IGA. Nothing herein shall be construed as a waiver of any Party's sovereign immunity.

d) **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, Fulton County and Fairburn hereby represent and warrant to each other (which representations and warranties shall be deemed independently material notwithstanding any prior inquiries) the following:

i. **Authority**. Each Party hereto expressly represents and warrants that (i) it has the power to make, deliver and perform this IGA, and has taken all necessary action to authorize the execution, delivery and performance of this IGA; (ii) this IGA when executed will constitute the valid obligations with respect to it legally binding upon the same and enforceable in accordance with the terms hereof; and (iii) no further consent or approval of any other Party not specifically mentioned herein is required in connection with the execution, delivery, performance, validity and enforcement of this IGA. Without limiting the generality of the foregoing, each Party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this IGA at a meeting of its governing authority in accordance with the Constitution and laws of the State of Georgia, to include, without limitation, the Georgia Open Meetings Act, O.C.G.A. 50-14-1 et seq.

ii. **Public Purpose**. This IGA and the services contemplated herein are for the public welfare and benefit and are undertaken in accordance with the laws and Constitution of the State of Georgia. Without limiting the foregoing, the parties specifically and expressly warrant and represent, and do hereby find, that this IGA (i) pertains to the provision of services and activities which the Parties are by law authorized to undertake and provide; (ii) is otherwise authorized under the Intergovernmental Contracts Clause of the Georgia Constitution of 1983, Art. IX, Sec. III, Par. 1(a); (iii) does not authorize the creation of new debt" as contemplated by Ga. Const. of 1 983, Art. IX, Sec. V. Par. I(a); and (iv) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent fee legislation by any Party in matters of government, and shall be binding and enforceable against the Parties and their successors during the term hereof in accordance with its terms.

e) **No Conflicting Agreements**. The execution, delivery and performance of this IGA will not violate or contravene any contract, undertaking, instrument or other agreement to which Fulton County and/or Fairburn are a Party or which purports to be binding upon said parties. Furthermore, the execution, delivery and performance of this IGA does not violate the provisions of any Party's respective charter or Code of Ordinances, or any statutory or decisional laws of the State of Georgia respecting similarly situated municipal corporations or political subdivisions of said State (as the case may be). The representations and warranties contained in this Section D shall be true and correct as of the date hereof and such representations and warranties, and the obligation of Fulton County and Fairburn to perform their respective obligations under this IGA shall be expressly conditioned upon said representations and warranties being true and correct on the date hereof. Furthermore, each Party hereto specifically acknowledges and agrees that they shall be forever estopped from making any claim, counterclaim, assertion, or other argument of any kind contrary to the representations and warranties set forth hereinabove or otherwise contained in this IGA.

f) **Assignment; Binding Effect**. The rights and obligations of the Parties under this IGA are personal and may not be assigned without the prior written consent of Fulton County and Fairburn. Subject to the foregoing, this IGA shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

g) **No Third-Party Beneficiaries**. This IGA is made between and limited to Fulton County and Fairburn, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than Fulton County and Fairburn. and no other person or entity shall be considered a third-party beneficiary by virtue of this IGA or otherwise entitled to enforce the terms of this IGA for any reason whatsoever.

h) **Exhibits**. Each and every exhibit referred to or otherwise mentioned in this IGA is attached to this IGA and is and shall be construed to be made a part of this IGA by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

i) **Relationship of Parties**. Notwithstanding anything in this IGA to the contrary, neither Party shall have the power to bind nor obligates the other Party except as expressly set forth in this IGA.

j) **Survival of Representations**. All terms, conditions, covenants, warranties contained in any determination of this IGA shall survive the termination of this IGA until amended by the applicable governing authority.

k) **Severability Clause**. In the event that any provision of this IGA shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this IGA shall be determined to be unlawful or otherwise unenforceable, the remainder of the IGA shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this IGA to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties, by and through their duly authorized representatives, have executed this IGA to be effective as of the date first set forth above.

CITY OF FAIRBURN, GEORGIA

By: ______________________________
Mayor: Elizabeth Carr-Hurst

Attest:

By: ______________________________
Interim City Clerk: Shana T. Moss

Approved as to Form:

By: ______________________________
City Attorney: William Randy Turner

FULTON COUNTY, GEORGIA

By: ______________________________
Rob Pitts, Chairman
Board of Commissioners

Attest:

By: ______________________________
Dr. Jesse A. Harris Interim Clerk to the Commission

Approved as to Form:

By: ______________________________
County Attorney

CITY OF FAIRBURN
CITY COUNCIL AGENDA ITEM

SUBJECT: Approval of the Intergovernmental Agreement between Fulton County, Georgia and the City of Fairburn, GA for Wastewater Services.

(X) AGREEMENT	( ) POLICY / DISCUSSION	( ) CONTRACT
( ) ORDINANCE	( ) RESOLUTION	( ) OTHER

Submitted: 08-01-201 Work Session: 08-26-2019 Council Meeting: 08-26-2019

DEPARTMENT: City Attorney

BUDGET IMPACT: None

PURPOSE: For Mayor and Council to approve the Intergovernmental Agreement between Fulton County, Georgia and the City of Fairburn, Georgia. This agreement is for Wastewater Services for the Reclamation Facility at Camp Creek.

HISTORY: Camp Creek treats wastewater from all the residential, commercial and industrial users in South Fulton, Union City, Fairburn, Palmetto, East Point areas and a portion of the City of Atlanta. The influent flows from the Camp Creek, Cochran Road and Deep Creek Pump Stations to the headworks of the plant. The plant also received and treats septage from customers located within the Fulton County service area. Septage is currently received at the receiving station and enters the plant with the combined plant influent.

FACTS AND ISSUES: Fulton County owns and operate wastewater collection systems and treatment plants that serve customers in north and south Fulton County. The sewerage system consists of three treatment plants in North Fulton and two in South Fulton. More than 2,300 miles of interceptor, trunk and sanitary sewers, force mains, water reuse distribution systems, 45 sewage lift stations and approximately 60,000 manholes.

RECOMMENDED ACTION: Approval of this agreement.

Elizabeth Carr-Hurst

Elizabeth Carr-Hurst, Mayor

INTERGOVERNMENTAL AGREEMENT
BETWEEN FULTON COUNTY, GEORGIA
AND THE CITY OF FAIRBURN, GEORGIA
FOR WASTEWATER SERVICES

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is executed as of ____ day of __________, 2019, by and between **THE CITY OF FAIRBURN, GEORGIA** ("Fairburn"), a municipality of the State of Georgia, and **FULTON COUNTY GEORGIA** ("Fulton County"), a political subdivision of the State of Georgia. The term "Party" refers individually to either Fairburn or Fulton County and the term "Parties" refers to both Fairburn and Fulton County.

WHEREAS, each of the parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of sewerage in its respective jurisdiction to serve its citizens; and

WHEREAS, Fulton owns and operates the Camp Creek Water Reclamation Facility, hereinafter referred to as "Camp Creek"; and

WHEREAS, Fulton has replaced, expanded and upgraded Camp Creek up to 24 MGD to improve its operational efficiency and reliability; and

WHEREAS, the Georgia Department of Natural Resources, Environmental Protection Division has mandated that watershed assessment and planning be conducted to support environmental regulatory action on wastewater discharges; and

WHEREAS, the Constitution of the State of Georgia provides, in Article IX, Section III, Paragraph I, Subparagraph I, Subparagraph (a), that any county or municipality of the State of Georgia may contract for any period not exceeding 50 years, with each other or with any other public agency, public corporation, or public authority for the provision of services, or for the joint or separate use of facilities or equipment when such contracts deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

WHEREAS, both parties agree that it is in their mutual interests to work cooperatively on wastewater management and watershed management in the Camp Creek service area and agree that the environmental management of the common watershed can be enhanced through regional cooperation; and

WHEREAS, the terms of this Agreement are intended to address the long term needs related to wastewater management; and

WHEREAS, the parties wish to set terms and conditions and provide procedures for the current and future use of Camp Creek and future capital improvements to the System, and to agree upon methods of determining and sharing current and future costs of capital improvements and operation and maintenance.

WHEREAS, this IGA is entered into with the understanding by the Parties that the primary purpose of this IGA is for the Parties to meet the public purpose of setting terms and conditions and providing procedures for the current and future use of Camp Creek and future capital improvements to the System (as defined herein), and to agree upon methods of determining and sharing current and future costs of capital improvements and operation and maintenance.

NOW THEREFORE, incorporating the foregoing recitals, and in consideration of the mutual promises, covenants and undertakings of the parties hereinafter set forth, and for the public purposes herein contained and provided for, the County and the City covenant, agree and bind themselves as follows:

ARTICLE 1
DEFINITIONS

In the construction of this Agreement, the following terms shall have the following meanings and shall be construed as required by the following provisions, unless inconsistent with the manifest intent of the text:

1.1 **APPLICABLE INTEREST RATE** The interest rate per annum shall be set at the rate of interest being charged on unpaid County taxes (See, Article 8.2).

1.2 **BUSINESS DAY** Each day excluding each Saturday, Sunday and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.

1.3 **CAPITAL IMPROVEMENTS** Those additions, replacements or improvements to the System, which, under generally accepted accounting principles or practices, are considered capital in nature, and which are made for the purpose of improving the System or expanding the capacity of the System.

1.4 **COLLECTION SYSTEM** A component of the System consisting of the sewer lines, storage, pump stations, and force mains which transport flows to a treatment facility or its influent pumping station.

1.5 **DATE OF EXECUTION** The date on which the last party to this Agreement executes this Agreement.

1.6 **DESIGN CAPACITY** Flow capacity in million gallons per day (MGD) of a particular water pollution control or reclamation facility as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, which must be certified by an engineer licensed to practice in the State of Georgia, expressed as average daily flow, maximum month [average daily] flow, and peak wet weather flow; provided, however, as to any facility for which a permit from a regulatory body as to its maximum flow capacity is required, the "Design Capacity" of such facility shall not exceed such maximum permitted flow capacity.

1.7 **CITY ADMINISTRATOR** The City Administrator of the City of Fairburn, or whoever shall in the future perform those functions relative to this Agreement.

1.8 **DIRECTOR OF PUBLIC WORKS** The Director of Public Works of Fulton, or whoever shall in the future perform those functions relative to this Agreement.

1.9 **GOVERNING AUTHORITY** As applicable, the City Council of the City of Fairburn, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.

1.10 **NPDES PERMIT** National Pollution Discharge Elimination System Permit.

1.11 **PROJECT** Any project consisting of capital improvements to the System undertaken pursuant to this Agreement.

1.12 **PROJECT COSTS** Any and all costs and expenses of a Project, including, without limitation, the costs of planning, design, engineering, architectural, and construction of the Project, the costs of plans and specifications, the costs necessary or incident to determining the feasibility or practicality of the Project, the costs of acquiring or condemning all lands, properties, rights, and easements acquired for the Project, the costs of all buildings, machinery and equipment included in the Project, the costs of insurance, financing charges and interest as applicable, the costs of compliance with environmental regulations and environmental protection, the costs of re-rating any facility, the costs of project construction management and construction engineering, administrative costs, legal fees and expenses, and such other costs as may be necessary or incident to the construction and equipping of the Project, and the placing of the Project in operation; provided, however, "Project Costs" shall not include any operating cost (as accepted by industry standard), any repair or routine maintenance cost, or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of the Constructing Party or such party's agent.

1.13 **RATES** Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Fulton. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale, inclusive of a capital component and operation and maintenance component based on no contribution to the System ["Capital O&M"]; and (3) wholesale, without a capital component and with operation and maintenance based on a capital contribution to the System ["O&M"]. Whenever Fulton deems it necessary to revise its rates, Fulton shall notify Fairburn in writing of the pending rate increase not less than thirty (30) days prior to submittal of such revised rates to Fulton's Governing Authority for approval. Upon approval of such rates, Fulton shall notify Fairburn in writing by the first to occur: (a) thirty (30) days after such approval by the respective Governing Authority or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Fulton's sole authority to revise its rates. All documentation used in the cost of service studies shall be available to Fairburn within ten (10) Business Days of written request therefor [Note: Current Fulton Wastewater rates are: (retail) $6.38 per 1,000 gallons; (capital/O&M) $4.44 per 1,000 gallons; (O&M) $1.83 per 1,000 gallons].

1.14 RESERVED CAPACITY The quantity of flow expressed as million gallons per day or thousand gallons per day purchased and allocated for use by Fairburn of a particular water pollution control or reclamation facility or Project operated by Fulton as determined by a percentage of total permitted capacity of Camp Creek.

1.15 REQUIRED FINANCIAL CONTRIBUTION. The dollar amount payable by Fairburn with respect to each Project undertaken pursuant to this Agreement equal to (a) the sum of the Total Project Cost for the Project minus the total amount of all state and federal funds , (b} multiplied by Fairburn's Required Financial Contribution Percent.

1.16 REQUIRED FINANCIAL CONTRIBUTION PERCENT The applicable percent specified in Article 2.1 or in an amendment to this Agreement for the applicable Project, or if no percent is so specified for any future capital improvement to an existing facility for which a Reserved Capacity is specified in this Agreement, the percent which such Reserved Capacity is to the Design Capacity of such facility.

1.17 SEWERAGE SYSTEM or SEWER SYSTEM The physical system of sewers, pumping stations, force mains, storage and treatment facilities by which Fairburn and Fulton collect, convey, treat and discharge wastewater within the Camp Creek service area.

1.18 TOTAL PROJECT COST The aggregate dollar amount of all Project Costs of a Project undertaken pursuant to this Agreement.

ARTICLE 2
PAST/CURRENT CAPITAL IMPROVEMENTS OF FULTON

2.1 FAIRBURN'S REQUIRED FINANCIAL CONTRIBUTION The parties agree that Fairburn's Required Financial Contribution Percent for the Project has met its current financial contribution.

2.2 METHOD OF PAYMENT BY FAIRBURN FOR ITS REQUIRED FINANCIAL CONTRIBUTION FOR REPLACEMENT OF CAMP CREEK
The parties agree that Fairburn's has currently met its Required Financial Contribution for Camp Creek which was equal to (a) the sum of the applicable Total Project Cost minus the total of all state and federal funds received or to be received for the respective Project (b) multiplied by the respective Required Financial Contribution Percent set forth in Article 2.1.

ARTICLE 3
FUTURE CAPITAL IMPROVEMENTS OF FULTON

3.1 DETERMINATION TO MAKE FUTURE CAPITAL IMPROVEMENTS
Fulton may make necessary Capital Improvements to the Sewerage System from time to time, subject to approval by appropriate state or federal regulatory agencies, if excessive water loads or flows are impairing the efficient operation of the System, if additional capacity is required, if such improvements are necessary to comply with the regulations or requirements of agencies of the

State of Georgia, and/or agencies of the federal government, or if improved processes are available and the additions of said processes are necessary or desirable to provide operations which are more efficient and economical. Fairburn agrees that the determination to make capital improvements for any one or more of the reasons aforementioned shall be made by Fulton. For the purpose of long-range planning, the parties, acting by and through the Fairburn Director of Public Works and the Fulton Director of Public Works, shall meet at least annually or more frequently as deemed necessary to determine whether additional capacity to serve both jurisdictions will be required, necessary, or desirable, for any facility which is part of the Sewerage System. The parties agree that any such meeting will be held within thirty (30) days of a written request therefor from either party.

3.2 NOTICE AND METHOD OF PAYMENT Upon the determination that Capital Improvements to the Sewerage System are necessary, desirable or appropriate pursuant to Article 3.1, Fulton shall provide written notice to Fairburn of such determination, which notice also shall include Fulton's current estimate of the Total Project Cost of the Project and its calculation of the Required Financial Contribution from Fairburn for such Project. Fairburn shall respond in writing acknowledging such notice within 30 days after the date such notice is received. Also, within at least 90 days prior to scheduled award of any Project contract, Fairburn shall deposit its Required Financial Contribution in lump sum with Fulton County. During the course of the Project's construction and upon completion of the Project, adjustments to the estimated Total Project Cost shall be made in accordance with Articles 4.2 and 4.3.

ARTICLE 4
PAYMENTS AND OWNERSHIP

4.1 FAILURE TO RESPOND In the event Fairburn fails to comply with Articles 2 and 3 of this Agreement, such failure shall be deemed a material breach of this Agreement and all remedies set forth in this Agreement, including the provisions of Article 4.3 (interest), shall be available to Fulton.

4.2 ADJUSTMENT OF PAYMENTS Fairburn and Fulton agree that the calculation of the Total Project Cost for future Capital Improvements and Fairburn's Required Financial Contribution with respect thereto are estimates, and that circumstances may arise that cause a change to such estimates. In such event, Fulton shall notify Fairburn in writing of the change of the estimated Total Project Cost amount and the change of its Required Financial Contribution as a result, and Fairburn shall pay its Required Financial Contribution with respect to any such increase of the estimated Total project Cost within sixty (60) days of receipt of notice of such change by lump sum to Fulton County. After (a) Fulton initiates any capital improvement pursuant to this Agreement has certified that construction of the Project has been completed in accordance with approved plans and specifications, (b) final payment of all federal or state grant money due Fulton, if any, (c) final payment to the construction contractor(s) and resolution of any appropriate construction claims (excluding claims stemming from a negligent or intentional act or omission of Fulton), and (d) Fulton has determined the final Total Project Cost of the Project, then the mathematical adjustment of the total Required Financial Contribution payable by Fairburn shall be made. Any payment required from either party as a result of such adjustment of the total Required

Financial Contribution shall be made by such party within 60 days of receipt of notice of the final Total Project Cost and shall be made in accordance with Article 2.2.

4.3 FAILURE TO PAY WHEN DUE In the event of any failure to pay when due any amount due under this Agreement, interest shall automatically accrue on such delinquent amount in accordance with Articles 1.1 and 8.2, from the date such payment is due until full payment of such delinquent amount and accrued interest thereon is made.

4.4 OWNERSHIP OF SYSTEM Fairburn agrees that the payment of its Required Financial Contribution for any current or future Project undertaken pursuant to this Agreement and payment of the rates assessed for its flow through Camp Creek constitutes consideration paid for Fairburn's contractual right to use Camp Creek in the amount of its Reserved Capacity therein, and does not constitute consideration paid for any ownership right, ownership interest, indicia of ownership or other property right in Camp Creek. Fairburn's use of Camp Creek in the amount of its Reserved Capacity specified herein shall not constitute and transfer of any ownership rights, ownership interests or other property rights in Camp Creek.

ARTICLE 5
USE OF FACILITIES

5.1 FAIRBURN'S RIGHT TO USE OF CAMP CREEK

5.1.1 EXISTING FACILITY. Subject to Article 2.2 of this Agreement, Fairburn's Reserved Capacity in Camp Creek 1.50 mgd with respect to Camp Creek, rated at 24 mgd.

5.1.2 FUTURE FACILITY. As addressed in Article 2.1 above, Fairburn shall retain the same 1.50 mgd Reserved Capacity. Fairburn's payment of its Required Financial Contribution for the total cost of projects undertaken pursuant to Articles 3 and 4 hereof, and Fairburn's timely payment of applicable treatment rates (currently $1.83 per 1,000 gallons) for its use of Camp Creek pursuant to this Agreement will entitle Fairburn to discharge in the future no more than the following respective Reserved Capacity of flow to Camp Creek:

Camp Creek Facility

	Design Capacity (MGD)	Fairburn's Reserved Capacity Percent	Fairburn's Reserved Capacity (MGD)
Maximum Month Daily Flow	24	4.167%	1.0
Peak Wet Weather Flow	60	2.5%	1.0

5.1.3 RE-RATING OF RESERVED CAPACITY. The percentage of reserved capacity allocated to Fairburn for the Camp Creek facility may not be increased or decreased except by amendment of this Agreement. Notwithstanding the provisions of Article 5.1.2, in the event that reserved capacity of the Camp Creek facility is re-rated through orders; permits or other federal or state regulatory requirements, Fairburn's percentage of reserved capacity will remain unchanged, but the actual reserve capacity will be increased or decreased proportionally. An amendment to this agreement shall be implemented to reflect such re-rating.

5.2. DETERMINATION AND PAYMENT OF APPLICABLE RATES Fairburn agrees to pay for its flow usage at an established rate (currently $1.83 per 1,000 gallons) that reflects the cost of service being provided as established and revised from time to time in accordance with Article 1.14. Said rate for flows exceeding the Reserved Capacity, for future flows only, shall be at the wholesale rate (currently $4.44 per 1,000 gallons) inclusive of a capital component (based on no previous capital contribution to the system; O&M/capital). Payments shall be due within thirty days of receipt of such billing.

5.3 DETERMINATION OF FLOWS The basis for billing shall be metered flow volumes wherever possible, see Exhibit A. Meters shall be calibrated no less often than quarterly, and appropriate calibration records shall be retained. Fairburn shall have the opportunity to observe the calibration process, test the calibration equipment and review the calibration records of Fulton upon written request. Any meter tested and found to be accurate within ten percent shall be considered accurate for billing purposes. Where metering stations are not feasible or a dispute arises with respect to the accuracy or appropriateness of metering results, Fairburn's Director of Public Works and the Fulton's Director of Public Works will attempt to resolve the dispute in good faith, in the first instance, before seeking other options that may be available to the parties.

5.4 PROVISION OF DATA Both parties agree to provide flow data, or, if flow is not metered, water consumption within the service area and population data to the other as may be reasonably requested in writing by the other party within ten (10) business days following receipt of each such request.

5.5 CHANGES IN CAPACITY Fairburn may request additional Reserved Capacity in Camp Creek. Any increase of Reserved Capacity shall require the adjustment of the Required Financial Contribution Percent for the Total Project Cost of any future capital improvements to such facility. The percentage of Reserved Capacity and the parallel Required Financial Contribution Percent may not, however, be increased or decreased except by formal written amendment of this Agreement.

5.6 FUTURE EXCESS FLOW When the average daily flow received from Fairburn to Camp Creek based on a 60 day reporting period reaches 80% of the Reserved Capacity for such facility, Fairburn must prepare and submit to Fulton a written plan which demonstrates how future flows will be maintained within the Reserved Capacity. Should Fairburn's flow received at Camp Creek exceed its then-current Reserved Capacity, Fairburn shall immediately take appropriate measures to reduce its flow to within its Reserved Capacity. Continued discharge in excess of the Reserved Capacity, without prior written approval by Fulton, calculated as a daily average over 60 days time, will be considered a material breach of contract, for which Fulton is entitled to the one or more of the following remedies, none of which shall be an exclusive remedy: (a) immediate payment of the applicable rate set forth in Article 5.2 with respect to the Reserved Capacity flow and the flow in excess of the Reserved Capacity plus a surcharge rate equal to 25% of the then current rate applicable to the excess flow, (b) payment (or reimbursement) of any and all damages claimed by third parties directly related to such excess flow, (c) immediate payment (or reimbursement) of any and all civil penalties and fines imposed by regulatory agencies or courts of law directly attributed to such excess flow, (d) interest on any aforesaid amount not paid when due pursuant hereto at the Applicable Interest Rate calculated in accordance with Article 8.2, and (e) any and all other remedies available at law or in equity. Any amount payable pursuant to this Article 5.6 shall be paid by Fairburn within fifteen (15) days following written demand therefor. The obligation to pay the applicable rate plus surcharge shall arise in the event that Fairburn's flows to Camp Creek exceed those set forth in Article 5.1.2.

ARTICLE 6
COLLECTION SYSTEM

6.1 FULTON'S RIGHTS Fulton shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fulton.

6.2 FAIRBURN'S RIGHTS Fairburn shall have the right to make or to permit connections to that portion of the Collection System located within the sewer service boundaries of Fairburn.

6.3 CHARGES FOR COLLECTION Fairburn shall have the right to determine and impose charges for connections permitted or made to the Collection System within its sewer service boundaries. This right shall include the right to contract with other sewer service provider(s) for the use of the Sewerage System within its sewer service boundaries, provided that Fairburn shall not permit by contract the discharge of flow which will result in Fairburn's exceeding its maximum Reserved Capacity flow to Camp Creek as set forth in Article 5 hereof.

6.4 OPERATION AND MAINTENANCE Fulton and Fairburn shall be responsible for operations and maintenance of the collection systems located within their respective sewer service boundaries.

ARTICLE 7
SEWER USE ORDINANCES AND INDUSTRJAL PRETREATMENT PROGRAMS

7.1 RESPONSIBILITIES Each party will be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within its jurisdictional limits.

7.2 REVISIONS Fairburn will amend and/or revise its sewer use ordinance and industrial pretreatment program to comply with all state and federal requirements and will accept and implement reasonable changes to such ordinance and program requested in writing by Fulton with respect to control of discharges which ultimately will be treated at Camp Creek. When required for compliance with Fulton's NPDES permit, Fairburn will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Fulton.

7.3 ENFORCEMENT AND PERMITTING Fairburn agrees to diligently enforce its sewer use ordinance and industrial pretreatment program for users of its portion of the Sewerage System. Fairburn will issue permits to all industrial dischargers within its jurisdictional limits as required by the ordinance and pretreatment program and will monitor compliance with the permits. A written report of non-compliant discharges within Fairburn's jurisdiction tributary to Camp Creek will be provided by Fairburn if any such non-compliance occurs.

7.4 FAILURE TO ENFORCE. In the event Fairburn fails to take reasonable pretreatment enforcement action on a timely basis, Fulton may take any action authorized by law.

7.5 OTHER JURISDICTIONS Before an industrial user located outside the jurisdictional boundaries of Fairburn discharges wastewater into the Fulton sewer system for treatment at Camp Creek, Fairburn will enter into an agreement with the jurisdiction in which such industrial user is located. The terms of such agreement shall be substantially equivalent to the applicable terms of this Agreement, and such agreement must be fully executed agreement must be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

7.5 ANNUAL REPORTS Fairburn will submit a written annual report to Fulton on the compliance status of each significant industrial user and any enforcement response taken or anticipated. Each such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

7.6 EMERGENCY ACTION Fulton, acting as an agent of Fairburn, may take emergency action to stop or prevent any discharge into its sewer system for treatment at Camp Creek that is generated in, or transported through Fairburn, when in the reasonable opinion of Fulton such damage presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, or contamination to Fulton's System. Fulton agrees to provide such notice as is practicable to the sewer user and Fairburn of its intent to take emergency action prior to taking action; provided, however, it is understood and agreed the opportunity to respond to such action or anticipated action may be limited to a hearing after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

ARTICLE 8
PROVISIONS OF GENERAL APPLICATION

8.1 RIGHT TO SEEK SPECIFIC PERFORMANCE The parties agree that the costs and damages resulting from a breach of the contractual rights to use the Sewerage System facilities up to the specified amounts granted by this Agreement may not be susceptible of monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy and the provisions of Article 8.8 have been complied with, either party shall be entitled to specific performance or any other equitable remedies provided by law.

8.2 RATE OF INTEREST Whenever this Agreement provides for the accrual and payment of interest on sums to be paid by one party to the other, such interest shall be calculated at the Applicable Interest Rate or Rates as defined in Article 1.1 in effect during the period for which interest is due. Interest shall be calculated at the Applicable
Interest Rate based upon the total number of calendar days during which the applicable amounts remain unpaid, including the original due date of the delinquent payment and excluding the day on which the amount (including accrued interest) is paid in full.

8.3 OPERATIONS REVIEW Both parties agree that, upon receipt by one party of a written request from the other party for an operations review, an operations review to determine the status of the operation, maintenance and personnel needs of any component of the Sewerage System, as well as the efficiency, management and reliability of cost-effectiveness of the operation of any component of the Sewerage System, shall be completed and a written report of such review and the resulting recommendations shall be delivered to the requesting party within ninety (90) days following receipt of the written request. The reasonable out-of-pocket costs of the operations review will be paid by the party requesting same. The recommendations of an operations review will not bind either party.

8.4 SEVERABILITY In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. This Agreement shall be construed to adopt, but not to enlarge upon, all the applicable provisions of the Constitution and general laws of Georgia, and, if any provisions hereof conflict with any applicable provisions of said Constitution or laws, the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail in lieu of any provision hereof in conflict or not in harmony therewith.

8.5 WAIVER A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.

8.6 TERM OF AGREEMENT This Agreement shall be in effect and shall constitute a binding obligation of the parties hereto from and after its execution by the last party to execute same and shall continue in effect for fifty (50) years. The parties may agree to amend this IGA at any time.

8.7 PERIODIC REVIEW OF PROVISIONS The parties shall hold periodic reviews of the provisions of this Agreement in order to provide for the changing needs of both parties, and to insure the Sewerage System meets all applicable state and federal requirements, as they may be promulgated or amended. The parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both parties. However, nothing herein shall prevent either party from proposing amendments to the other at any time during the term of this Agreement.

8.8 NOTICE OF COMPLETION OF PROJECTS AND DETERMINATION OF FINAL COSTS Within one hundred and eighty (180) days of the completion of a Project and determination of final cost, Fulton will notify Fairburn of the completion and determination of final cost. Any overpayment or underpayment by Fairburn shall be settled in lump sum not more than sixty (60) days after providing such notice. All documents used in the notification of Project completion and determination of final cost shall be available to Fairburn within 10 business days of written request therefore.

8.9 RESOLUTION OF DISPUTES Should there arise any issues or disputes related to this Agreement, the parties will in good faith attempt to resolve such issues or disputes promptly and amicably, and may by mutual agreement submit same to non-binding mediation.

8.10 FIRE AND EXTENDED INSURANCE COVERAGE Fulton shall obtain and maintain fire and extended coverage, flood, vandalism, and malicious mischief insurance coverage for its capital assets and personally included in the Sewerage System, including boiler or pressure vessel explosion coverage and all other coverage reasonably necessary to adequately cover reasonably foreseeable risks, insuring the buildings' systems, equipment and other improvements and all additions, extensions, alterations and modification thereto in an amount equal to at least seventy-five (75) percent of the full replacement value thereof, as such value shall be determined from periodically by Fulton. The cost of such coverage shall be allocated to the insured facility.

8.11 DAMAGE OR DESTRUCTION OF FACILITIES In the event of damage or destruction by fire or other casualty of the Sewerage System, Fulton shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Any repair or rebuilding required hereunder shall be paid for with the proceeds of the insurance required under Article 8.10 and any remaining costs shall be paid by Fulton as the owner of the Camp Creek Plant.

8.12 PERSONAL LIABILITY No elected official, director, officer, or employee of either party shall be charged personally or held contractually liable by or lo the other party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

8.13 RESPONSIBILITY OF PARTIES FOR SEWERAGE SYSTEM Fairburn and Fulton shall be responsible for the maintenance, repair and operation of their respective components of the Sewerage System. Neither party nor a signatory to this Agreement shall be beneficiary of the rights and obligations thereunder.

8.14 TIME OF ESSENCE Time is of the essence for all terms of this Agreement.

8.15 HEADINGS The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

8.16 ASSISTANCE Fairburn and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Sewerage System.

8.17 NUMBER OF ORIGINAL DOCUMENTS It is agreed between the parties that this Agreement shall be executed in two or more originals, all of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.

8.18 ASSIGNMENT OF AGREEMENT This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any party hereto except with the consent in writing of the other party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a party hereto of any obligation hereunder.

8.19 INTERGOVERNMENTAL AGREEMENT The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section 111, Paragraph I of the Constitution of the State of Georgia of 1983.Fairburn shall pay its financial obligations under this Agreement in accordance with the provisions of this Agreement, whether or not a Project, or any part thereof, has been completed, is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction by offset and shall not be conditional upon the performance or non-performance by Fulton of any other agreement or any other condition whatever.

8.20 DEFAULT Failure of Fairburn to pay Fulton any of the payments required under this Agreement when due or failure of either party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such party. In any such event the non-defaulting party may, after complying with the provisions of Article 8.8, bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term or obligation of this Agreement against the other party.

8.21 NOTICE All notices given pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton County shall be addressed as follows, unless otherwise directed in writing:

County Manager
Government Center Tower
141 Pryor Street, Suite 10061
Atlanta, Georgia 30303

with a copy to the:

Director
Fulton County Department of Public Works Water Services Division
Government Center Tower 141 Pryor Street, Sixth Floor
Atlanta, Georgia 30303.

All notices to Fairburn shall be addressed as follows, unless otherwise directed in writing:

City Manager
City of Fairburn
56 Malone Street
Fairburn, Georgia 30213

With a copy to the:

Director of Public Works
City of Fairburn
56 Malone Street
Fairburn, Georgia 30213

8.22. PRIOR AGREEMENTS This Agreement supersedes any and all previous agreements between Fulton County and Fairburn. Under the existing agreement between the County and the City, said Agreement dated June 7, 2000, the City was authorized to utilize the County's Sewer System to transport and treat up to 250,000 gallons per day from the Town of Tyrone, Georgia, subject to certain conditions. Said authorization contemplated the City constructing and operating its own sewerage treatment facility which would have ultimately treated the wastewater generated from the Town of Tyrone. Paragraph V(C) if the Agreement required the City to obtain a performance bond payable to the County in the amount of $4,000,000.00, which bond was designated to compensate the County in the event that the City did not build a treatment facility. Pursuant to this Agreement, the County agrees to waive any such requirement and shall release, return, void, and cancel any such bond or obligations growing therefrom on behalf of the City; provided, however, that the City shall be allowed to continue to utilize the County's Sewer System to transport and treat up to 250,000 gallons per day from the Town of Tyrone. Any such amount shall be included in, and not in addition to, the capacity allocated to the City under Paragraph 1 of this Agreement.

8.23 ADDITIONAL UNDERSTANDINGS The Parties to this IGA have mutually acknowledged and agreed to the following:

a) The Parties shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of this IGA.

b) It is not the intent of this IGA to restrict the Parties to this IGA from their involvement or participation with any other public or private individuals, agencies or organizations.

c) It is not the intent or purpose of this IGA to create any rights, benefits and/or trust responsibilities by or between the Parties.

d) This IGA shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the IGA or keep in place any contract, except as specifically provided in this IGA.

8.24 TERMINATION Anything contained herein to the contrary notwithstanding, either Party may terminate the IGA:

1. If the other Party commits a material breach of the IGA and fails to cure said breach to the non-breaching Party's satisfaction after receiving thirty (30) days written notice; or

2. Without cause, if the terminating party gives ninety (90) days prior written notice to the other Party.

8.25 RESPONSIBILITY FOR CLAIMS AND LIABILITY It is hereby stipulated and agreed between the parties that, with respect to any claim or action brought by a third party and arising out of the activities described in this IGA or stems from any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations, each party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence actions or omissions of its own agents, officers, and employees. Either party may self-fund its obligations under this IGA. However, nothing herein shall be construed as a waiver of any party's sovereign immunity or the immunities available to the officials, officers and employees of the parties. Fairburn shall ensure that any contractor retained or selected by Fairburn to provide services related to the work contemplated in this agreement shall agree to indemnify and hold harmless Fulton County as well as Fulton County's commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which they or any of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, irrespective of Fulton County's negligence (except that no party shall be indemnified for their own sole negligence). Any contractor retained by Fairburn if requested, shall assume and defend at the contractor's own expense, any suit, action or other legal proceedings arising there from in which Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, are named as a party, and the contractor hereby agrees to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, arising there from. Fairburn shall ensure that the provisions of this Article are included in all contracts and subcontracts.

8.25 CONFIDENTIALITY Fairburn agrees to establish appropriate administrative, technical, and physical safeguards to ensure that it does not provide and make available confidentiality, protected, proprietary or privileged data regarding the System. Fairburn agrees to abide and comply with all applicable laws, rules and regulations relating to privacy and confidentiality of protected information.

8.26 REPRESENTATIONS REGARDING DATA Each Party has made its best efforts to ensure the accuracy and completeness of the information and data transferred or made available through the performance of the IGA. Each Party makes no warranties or representations to the public, to the other Party or to third parties regarding data made available through the performance of the IGA. It shall be the responsibility of each Party or any third party to verify the accuracy of data. Each Party to this IGA accepts no liability that may arise from the use of data by any person or any third party. All information is provided "as is" with no warrantee of any kind concerning fitness of use. No Party to this IGA shall be liable for the use of data or any inferences, judgments, or decisions resulting from use of data.

8.27 REVIEW OF ACTIVITIES Authorized representatives of Fulton County may at all reasonable times review and inspect the activities and data collected under the terms of this IGA and any amendments thereto, including but not limited to, all reports, drawings, studies, specifications, estimates, maps and computations prepared by or for Fairburn. Fairburn shall keep accurate records in a manner approved by Fulton County with regard to the activities conducted under this IGA and submit to Fulton County upon request, such information as is required in order to ensure compliance with this agreement.

8.28 MISCELLANEOUS

a) **Entire Agreement; Counterparts**. This IGA may be executed by the Parties in counterparts, each of which shall constitute an original. This IGA, including the attached exhibits, sets forth the entire understanding between the Parties pending the execution of the Agreement, and supersedes all previous agreements and understandings between them, oral or written, and may be amended only in a document executed by both Parties. No amendment, modification, termination, or waiver of any provision of this IGA, nor consent to any departure by the Parties, shall in any event be effective unless the same shall be in writing and signed by Fulton County and City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

b) **Governing Law**. This IGA and the Parties' rights and obligations hereunder, shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws rules.

c) **Limitation on liability**. No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this IGA. Nothing herein shall be construed as a waiver of any Party's sovereign immunity.

d) **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, Fulton County and Fairburn hereby represent and warrant to each other (which representations and warranties shall be deemed independently material notwithstanding any prior inquiries) the following:

i. **Authority.** Each Party hereto expressly represents and warrants that (i) it has the power to make, deliver and perform this IGA, and has taken all necessary action to authorize the execution, delivery and performance of this IGA; (ii) this IGA when executed will constitute the valid obligations with respect to it legally binding upon the same and enforceable in accordance with the terms hereof; and (iii) no further consent or approval of any other Party not specifically mentioned herein is required in connection with the execution, delivery, performance, validity and enforcement of this IGA. Without limiting the generality of the foregoing, each Party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this IGA at a meeting of its governing authority in accordance with the Constitution and laws of the State of Georgia, to include, without limitation, the Georgia Open Meetings Act, O.C.G.A. 50-14-1 et seq.

ii. **Public Purpose.** This IGA and the services contemplated herein are for the public welfare and benefit and are undertaken in accordance with the laws and Constitution of the State of Georgia. Without limiting the foregoing, the parties specifically and expressly warrant and represent, and do hereby find, that this IGA (i) pertains to the provision of services and activities which the Parties are by law authorized to undertake and provide; (ii) is otherwise authorized under the Intergovernmental Contracts Clause of the Georgia Constitution of 1983, Art. IX, Sec. III, Par. 1(a); (iii) does not authorize the creation of new debt" as contemplated by Ga. Const. of 1 983, Art. IX, Sec. V. Par. I(a); and (iv) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent fee legislation by any Party in matters of government, and shall be binding and enforceable against the Parties and their successors during the term hereof in accordance with its terms.

e) **No Conflicting Agreements.** The execution, delivery and performance of this IGA will not violate or contravene any contract, undertaking, instrument or other agreement to which Fulton County and/or Fairburn are a Party or which purports to be binding upon said parties. Furthermore, the execution, delivery and performance of this IGA does not violate the provisions of any Party's respective charter or Code of Ordinances, or any statutory or decisional laws of the State of Georgia respecting similarly situated municipal corporations or political subdivisions of said State (as the case may be). The representations and warranties contained in this Section D shall be true and correct as of the date hereof and such representations and warranties, and the obligation of Fulton County and Fairburn to perform their respective obligations under this IGA shall be expressly conditioned upon said representations and warranties being true and correct on the date hereof. Furthermore, each Party hereto specifically acknowledges and agrees that they shall be forever estopped from making any claim, counterclaim, assertion, or other argument of any kind contrary to the representations and warranties set forth hereinabove or otherwise contained in this IGA.

f) **Assignment; Binding Effect**. The rights and obligations of the Parties under this IGA are personal and may not be assigned without the prior written consent of Fulton County and Fairburn. Subject to the foregoing, this IGA shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

g) **No Third-Party Beneficiaries**. This IGA is made between and limited to Fulton County and Fairburn, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than Fulton County and Fairburn. and no other person or entity shall be considered a third-party beneficiary by virtue of this IGA or otherwise entitled to enforce the terms of this IGA for any reason whatsoever.

h) **Exhibits**. Each and every exhibit referred to or otherwise mentioned in this IGA is attached to this IGA and is and shall be construed to be made a part of this IGA by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

i) **Relationship of Parties**. Notwithstanding anything in this IGA to the contrary, neither Party shall have the power to bind nor obligates the other Party except as expressly set forth in this IGA.

j) **Survival of Representations.** All terms, conditions, covenants, warranties contained in any determination of this IGA shall survive the termination of this IGA until amended by the applicable governing authority.

k) **Severability Clause**. In the event that any provision of this IGA shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this IGA shall be determined to be unlawful or otherwise unenforceable, the remainder of the IGA shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this IGA to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties, by and through their duly authorized representatives, have executed this IGA to be effective as of the date first set forth above.

CITY OF FAIRBURN, GEORGIA

By: ______________________________
Mayor: Elizabeth Carr-Hurst

Attest:

By: ______________________________
Interim City Clerk: Shana T. Moss

Approved as to Form:

By:______________________________
City Attorney: William Randy Turner

FULTON COUNTY, GEORGIA

By: ______________________________
Rob Pitts, Chairman
Board of Commissioners

Attest:

By: ______________________________
Dr. Jesse A. Harris Interim Clerk to the Commission

Approved as to Form:

By:______________________________
County Attorney

CITY OF FAIRBURN
CITY COUNCIL AGENDA ITEM

SUBJECT: Fulton County School District

(X) AGREEMENT	( ) POLICY / DISCUSSION	( ) CONTRACT
( ) ORDINANCE	( ) RESOLUTION	( ) OTHER

Submitted: 08-21-2019 **Work Session: 08-26-2019** **Council Meeting: 08-26-2019**

DEPARTMENT: City Attorney

BUDGET IMPACT: None

PUBLIC HEARING? ( ) Yes (X) No

PURPOSE: To amend the intergovernmental agreement with the Fulton County School District approved by City Council on May 13, 2019 as to extend the due diligence period for thirty (30) days from August 26, 2019 to September 25, 2019.

HISTORY: On May 13, 2019, City Council approved an IGA with the Fulton County School District. Pursuant to this agreement, the City conveyed to FCSD approximately .230 acres of abandoned right-of-way needed by FCSD in connection with the upcoming construction the South Fulton STEM High School. The City will be paid the appraised value of the property in the amount of $4,865.00.

FACTS AND ISSUES: The FCSD is seeking an additional thirty (30) days of due diligence to complete title work.

RECOMMENDED ACTION: Approval

Elizabeth Carr-Hurst

Elizabeth Carr-Hurst, Mayor

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY ("**Amendment**") is made effective as of the ____ day of August, 2019 (the "**Effective Date**") by and between **CITY OF FAIRBURN, GEORGIA,** a Georgia municipal corporation ("**Seller**"), and the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia ("**Buyer**").

WHEREAS, Seller and Buyer previously entered into that certain Intergovernmental Agreement for the Purchase and Sale of Real Property dated June 27, 2019 (the "**Agreement**") governing the purchase and sale of certain real property described therein; and

WHEREAS, Seller and Buyer desire to amend the Agreement as provided herein.

NOW, FOR AND IN CONSIDERATION of the covenants, agreements, premises and Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties hereto intending to be legally bound hereby, do covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Defined Terms. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

3. Inspection Period; Closing Date. Section 14(a) of the Agreement is hereby amended to provide that the Inspection Period shall expire on September 25, 2019. Notwithstanding the foregoing or anything to the contrary in the Agreement, the parties agree and stipulate that the Closing shall take place on or before October 25, 2019, as originally contemplated in the Agreement, subject to Buyer's ability to request an extension of the Closing Date for a period of up to 60 days, as set forth in Section 6 of the Agreement.

4. Reaffirmation; Conflict. The parties hereby reaffirm the provisions of the Agreement and, except as expressly modified herein, the Agreement remains unchanged and in full force and effect. In the event of a conflict between the terms and provisions of this Amendment and the Agreement, the terms and provisions of this Amendment shall control and be given effect.

5. Counterparts; Electronic Copies. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. To facilitate execution, the parties agree that this Amendment may be executed and forwarded to the other party by email transmission and that an executed, emailed copy shall be binding and enforceable as an original.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

SELLER:

CITY OF FAIRBURN, GEORGIA,
a Georgia municipal corporation

By: ______________________________
Elizabeth Carr-Hurst, Mayor

Attest: ______________________ (Seal)
Shana T. Moss, Interim City Clerk

Approved As To Form:

____
William R. Turner, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

BUYER:

FULTON COUNTY BOARD OF EDUCATION

By: ______________________________
Name: Linda P. Bryant
Title: Board Chair/President
Date: _________________

By: ______________________________
Name: Dr. Michael Looney
Title: Superintendent
Date: _________________

Sworn to and subscribed before me
This the ___ day of __________, 2019.

____
Notary Public

My Commission Expires:__________

(Notary Seal)

INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "**Agreement**") is entered into as of the 27th day of June, 2019, by and between the **CITY OF FAIRBURN, GEORGIA,** a Georgia municipal corporation ("**Seller**"), and the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia ("**Buyer**").

WHEREAS, Seller desires to sell and Buyer desires to purchase approximately 0.230 acres of real property located within and being a portion of Shaw Drive, lying and being in Land Lot 66 of the 9F District of Fulton County, Fairburn, Georgia, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, together with all easements, rights and privileges appurtenant thereto, and any improvements on such real property (collectively, the "**Property**").

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars ($10.00), in hand paid to Seller as independent consideration for Seller's entering into this Agreement, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement in their entirety.

2. **Purchase and Sale.** Seller agrees to sell and Buyer agrees to purchase the Property, subject to the terms and conditions of this Agreement.

3. **Earnest Money.**

(a) **Deposit of Earnest Money**. Within ten (10) business days after execution of this Agreement by Buyer and Seller, Buyer will deposit with Buyer's attorney, Nelson Mullins Riley and Scarborough LLP, 201 17th Street, Suite 1700, Atlanta, GA 30363, Attn: Cheryl V. Shaw, Esq. (the "**Escrow Holder**") in current U.S. funds in cash or wire transfer, the sum of One Thousand and No/100ths Dollars ($1,000.00) in current U.S. funds in cash or wire transfer (the "**Earnest Money**"). Escrow Holder shall hold the Earnest Money in a federally insured non-interest-bearing account. If Buyer has not previously terminated this Agreement pursuant to Section 14(b), then the Earnest Money shall become nonrefundable on the tenth (10th) day following the expiration of the Inspection Period and shall be credited to the Purchase Price, unless the transaction does not close due to a default by Seller or the failure of a condition under Section 12 to be satisfied.

(b) **Disposition of Earnest Money Upon Failure to Close.** Assuming all the conditions to Buyer's obligations to close have been satisfied or waived, if the Closing fails to occur due to Buyer's default under this Agreement, then the disposition of the Earnest Money shall be governed by Section 16(a) hereof; if the Closing fails to occur due to Seller's default under this Agreement and all of the conditions to Seller's obligation to close having been satisfied or waived, then the Earnest Money shall promptly be refunded to Buyer; and if the

Closing fails to occur due to the failure of any of the conditions set forth in Section 12 hereof other than as a result of Buyer's default under this Agreement, then the Earnest Money shall be refunded to Buyer.

4. **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be Four Thousand Eight Hundred Sixty-Five and No/100ths Dollars ($4,865.00). Provided all the conditions in Section 12 hereof have been satisfied or waived as of the Closing Date, Buyer shall deposit in current U.S. funds in cash or wire transfer with Escrow Holder on the Closing Date (as such term is defined in Section 6 below) an amount equal to the Purchase Price less the Earnest Money deposited plus any costs to be paid by Buyer at Closing as provided in Section 10(c) hereof.

5. **Documents.** Seller shall within the Inspection Period provide Buyer all of the following materials to the extent the materials exist and are in Seller's possession or control: a copy of any title information, leases, service and maintenance agreements, and brokerage agreements as to the Property; and a copy of any surveys, soil reports and environmental reports relative to the Property which have been obtained by Seller. **Seller shall also provide any information relative to any right-of-way abandonment proceedings that may have already occurred as to the Property, and any records relative to the installation of the existing gate at the entrance of the Property**. Between the Effective Date and the Closing Date, Seller will provide to Buyer any third-party documents pertaining to the Property that come into Seller's possession, custody or control. Buyer acknowledges that any property information provided by Seller pursuant to this paragraph ("**Property Information**") is provided without any representations or warranties as to the accuracy or contents thereof, and Buyer acknowledges and agrees that it shall not be entitled to rely upon any such materials. Buyer acknowledges it is solely responsible for ordering its own title exam, title commitment and title insurance policy; its own survey, soil reports, environmental reports, environmental assessments and any other inspections or reports desired by Buyer, all at Buyer's sole expense.

6. **Closing.** The closing of the purchase and sale of the Property (the "**Closing**") shall take place no later than the first business day that is sixty (60) days following the expiration of the Inspection Period (the "**Closing Date**") at the offices of Nelson Mullins Riley & Scarborough LLP; provided, however, that the parties may, but shall not be obligated to, agree in writing to an earlier date of Closing. Notwithstanding the foregoing, Buyer may request an extension of the Closing Date for up to 60 days if any of the conditions of Section 12 have not been or are anticipated not to be met by the originally scheduled Closing Date, and Seller shall not unreasonably condition, delay or withhold its consent to the same. Each of Seller and Buyer agrees to deposit with the Escrow Holder the documents required of it, and Buyer agrees to deposit with the Escrow Holder the amount specified in the second sentence of Section 4 hereof, in all cases sufficiently in advance of the Closing Date so as to allow the Closing to occur on the Closing Date, and agree that the transaction may close in escrow such that the parties need not be physically present for Closing.

7. **Real Estate Taxes; Utilities.** The parties agree and acknowledge that the Property is tax-exempt and that there are no utility accounts on the Property; and as such, there is no need for proration of taxes or utility charges at Closing.

8. **Title.**

(a) Seller covenants to convey to Buyer at Closing fee simple title in and to the Property by quitclaim deed, free and clear of all liens, claims of lien, deeds to secure debt, mortgages, encroachments, leases, matters of survey and other encumbrances except for those exceptions expressly accepted by Buyer (the "**Permitted Exceptions**").

(b) During the Inspection Period (as defined below) Buyer may, at Buyer's expense, examine title to the Property. Promptly after receipt, Buyer shall provide Seller with a copy of Buyer's title commitment and all instruments listed as exceptions therein. Prior to the expiration date of the Inspection Period, Buyer shall give Seller written notice of any encumbrances disclosed by such examination to which Buyer objects (the "**Title Objections**"). Seller shall have **five (5) business days** after receipt of Buyer's notice of any Title Objection in which to notify Buyer if Seller does not intend to satisfy such Title Objection. If Seller timely notifies Buyer that it does not intend to satisfy any Title Objection then Buyer shall have **five (5) business days** after receipt of Seller's notice in which to terminate this Agreement. If Buyer does not elect to terminate this Agreement within said five (5) business-day period, then Buyer shall be deemed to have waived Buyer's Title Objections and the same shall be a Permitted Exception. If Seller fails prior to the Closing Date to satisfy any Title Objection which Seller has agreed to satisfy, then Buyer may: (i) terminate this Agreement, in which event the Earnest Money shall be promptly refunded to Buyer; and the parties shall have no further obligation, each to the other under the Agreement except those that expressly survive termination; or (ii) waive such satisfaction (whereupon any such Title Objection shall be deemed a Permitted Exception) and consummate the purchase and sale of the Property.

9. **Survey; Conveyance of As-Surveyed Tract.**

(a) During the Inspection Period (as defined below) Buyer may, at Buyer's expense, cause a survey of the Property (the "**Survey**") to be prepared.

(b) Buyer shall have the right to object to any matters shown on the Survey prior to the expiration of the Inspection Period (the "**Survey Objections**"). Survey Objections shall be resolved in the same manner as Title Objections.

10. **Closing Documents and Costs.** On the Closing Date:

(a) Seller shall execute and deliver to Buyer:

(i) a quitclaim deed, in standard and recordable form, conveying the Property, subject only to the Permitted Exceptions, in the form of **Exhibit B** attached hereto and incorporated herein by reference;

(ii) an owner's title affidavit in the form of **Exhibit C** attached hereto and incorporated herein by reference;

(iii) a Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act;

(iv) an affidavit pursuant to O.C.G.A. § 48-7-128 stating whether Seller is subject to withholding for State of Georgia income tax withholding purposes;

(v) a settlement statement (the "**Settlement Statement**");

(vi) a Certificate of Authority of Executing Officer or other reasonable evidence of authority and Organizational Documents as required by the Title Company to complete the purchase and sale;

(vii) **a true and correct copy of the duly adopted Ordinance or Resolution by which the Fairburn City Council has formally abandoned the Property as right-of-way**; and

(viii) such other documents as may be required by the Title Company or as reasonable and customary under the circumstances to consummate the purchase and sale.

(b) Buyer shall pay the Purchase Price, execute and deliver the Settlement Statement, and provide such other documents as may be reasonable and customary under the circumstances to consummate the purchase and sale.

(c) Seller shall pay the costs and expenses of curing Title Objections and Survey Objections which Seller has elected or is required to cure, and Seller's attorneys' fees.

(d) Buyer shall pay the cost to record the deed, the costs and expenses associated with preparation of the title commitment and the owner's title insurance policy premium, the Survey, and Buyer's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

(e) Seller shall deliver possession of the Property to Buyer on the date of Closing. Seller shall have terminated all service and maintenance contracts for the Property without liability to Buyer on or before the Closing Date.

11. **Warranties, Representations and Additional Covenants.**

(a) **Seller Warranties, Representations and Additional Covenants**. In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer, and covenants that:

(i) Seller is validly existing and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder shall have been duly authorized by Seller prior to Closing.

(ii) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not conflict with and shall not result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien or encumbrance upon any of the Property by reason of the terms of any contract, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller or the Property, which will not be discharged at Closing.

(iii) There are no pending actions, suits, proceedings or judgments against, by or affecting Seller which affect or may affect title to the Property, and there are no pending condemnation actions involving all or any portion of the Property.

(v) Seller is not a party to any leases, management, maintenance, service or other contracts which are in force with respect to the Property.

(vi) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property respecting which any such person could claim a lien against the Property, nor shall the Property be subject to any such liens arising by, through or under Seller.

(vii) Except as provided in any environmental reports that may be provided to Buyer by Seller or obtained by Buyer, (a) Seller has not received any notice of any violation of any applicable federal, state or local environmental law; (b) Seller has not used the Property as a landfill or dump; and (c) Seller has not generated any hazardous substances on or under the Property in violation of environmental laws.

(viii) Seller covenants that, from the date of the execution of this Agreement until the earlier of the Closing or the termination of this Agreement, Seller shall not sell, encumber, pledge, convey, assign, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the Property without the Buyer's prior written consent.

All representations and warranties of Seller made herein shall not merge with the deed and shall survive the Closing for a period of twelve (12) months after the Closing Date.

(b) **Buyer Warranties, Representations and Additional Covenants.** Buyer represents and warrants to Seller that:

(i) Buyer is validly existing and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder, subject to subsection 11(b)(ii), below;

(ii) Neither the execution and delivery of this Agreement nor the consummation by Buyer of the transaction contemplated hereby will (i) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Buyer is a party, or (ii) violate any order, injunction, decree, statute, rule or regulation applicable to Buyer, except that public vote approving this Agreement and consummation of the within transaction is required by law, and has not yet occurred.

12. **Conditions to Buyer's Obligations.** The obligations of Buyer hereunder to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction, performance or waiver of the following on or before the Closing Date:

(a) Seller shall not be in material breach of this Agreement;

(b) The representations and warranties of Seller are true and correct in all material respects when made and as of the Closing Date;

(c) The City Council of the City of Fairburn shall have adopted legislation formally abandoning the Property as public right-of-way, and all statutory requirements for such abandonment shall have been met;

(d) The City Council of the City of Fairburn shall have approved this Agreement and authorized the contemplated transaction by public vote if and as required by law; and

(e) The Fulton County Board of Education shall have approved this Agreement and authorized the contemplated transaction by public vote as required by law;

(f) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending against Seller that would materially and adversely affect Seller's ability to perform its obligations under this Agreement; and

(g) There shall exist no pending action, suit or proceeding with respect to Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby.

If any of the conditions set forth above has not been satisfied or performed on or as of the Closing Date, Buyer shall have the right to: (i) terminate this Agreement by giving notice to Seller, in which event the Earnest Money shall be promptly refunded to Buyer and the parties shall have no further obligation under the Agreement, except those that expressly survive termination; or (ii) waive such failure of condition and proceed to Closing.

13. **Conditions to Seller's Obligations.** The obligations of Seller hereunder to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction, performance or waiver of the following on or before the Closing Date:

(a) The representations and warranties of Buyer are true and correct in all material respects when made and as of the Closing Date; and

(b) City Council of the City of Fairburn shall have adopted legislation formally abandoning the Property as public right-of-way, and all statutory requirements for such abandonment shall have been met; and

(c) The City Council of the City of Fairburn shall have approved this Agreement and authorized the contemplated transaction by public vote if and as required by law; and

(d) The Fulton County Board of Education shall have approved this Agreement and authorized the contemplated transaction by public vote as required by law.

If any of the conditions set forth above have not been satisfied or performed on or as of the Closing Date, Seller shall have the right to: (i) terminate this Agreement by giving notice to Buyer, in which event the Earnest Money shall be promptly refunded to Buyer and the parties shall have no further obligation under the Agreement, except those that expressly survive termination; or (ii) in the event the condition set out in Section 13(a) is not met, waive such failure of condition and proceed to Closing.

14. **Inspection Period; Access.**

(a) Buyer shall have a period of time beginning on the Effective Date and expiring on the date that is sixty (60) days thereafter (such period of time, the "**Inspection Period**") in which to examine, inspect and evaluate the Property. During the Inspection Period, Buyer, its agents and contractors shall have the right to enter the Property, at their sole risk and expense, for the purposes of inspecting the Property and making surveys, soil and other investigations and inspections as Buyer may reasonably require to assess the condition of the Property subject to the restrictions and conditions set forth herein.

(b) The obligations of Buyer to consummate the Closing under this Agreement shall be conditioned upon Buyer satisfying itself, in its sole and absolute discretion, within the Inspection Period that the Property is in all respects satisfactory for Buyer's intended use. In the event Buyer determines, in its sole discretion, for any reason or for no reason that it does not wish to purchase the Property, Buyer may terminate this Agreement by written notice to

Seller within ten (10) days following the expiration date of the Inspection Period, in which event the Earnest Money shall be refunded to Buyer. Thereafter, this Agreement shall terminate and the parties shall have no further obligation to one another except for those provisions that expressly survive the termination of this Agreement.

(c) During the Term of this Agreement, Buyer may also traverse the Property for the purpose of vehicular and pedestrian ingress and egress to Buyer's adjacent property directly to the north of the Property.

15. **No Broker.** Seller and Buyer each represent and warrant to the other that neither has employed, retained or consulted any broker, agent or finder in carrying on the negotiations in connection with this Agreement, or in connection with a listing agreement or any other agreement for the management, sale, or lease of or otherwise conveying any interest in the Property.

16. **Remedies.**

(a) *Of Seller.* If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to a default by Buyer hereunder, Seller may terminate this Agreement and retain the Earnest Money as full liquidated damages for such default. The parties acknowledge that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages, and are not a penalty. Such retention of the Earnest Money shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement.

(b) *Of Buyer.* If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to a default by Seller hereunder, Buyer may exercise such rights and remedies as may be provided elsewhere in this Agreement for specific instances of default by Seller, and Buyer may pursue either of the following remedies: (i) Buyer may seek specific performance of this Agreement; or (ii) Buyer may terminate this Agreement and the Earnest Money shall be promptly refunded to Buyer.

17. **Notices.** All notices, elections and communications permitted or required hereunder shall be in writing and shall be deemed given, received and effective for all purposes when delivered to the notice address for such recipient as set forth on the signature page to this Agreement, regardless of whether actually received. Any notice rejected by reason of a failure of the intended recipient to update its current address, or refused by the party, shall be deemed given, received and effective on the date of such rejection or refusal. Notices shall be given by courier, or by FedEx or by similar nationally recognized overnight courier service, or by email with next-day delivery by a nationally recognized overnight courier service, and notices may be given by and to counsel for the parties.

18. **Casualty and Condemnation.** In the event of the institution of any proceedings, judicial, administrative or otherwise, which shall relate to the proposed taking of any substantial portion of the Property by eminent domain prior to Closing, or should a substantial portion of the Property be damaged by fire, earthquake, flood, sinkhole, or other casualty prior to Closing, then

Buyer shall have the right and option to terminate this Agreement at any time prior to Closing by written notice to Seller at any time after Buyer's receipt of notice of any such occurrence. Seller shall provide Buyer written notification of such occurrence (i) within forty-eight (48) hours from the Seller's receipt of any notification in the event of eminent domain proceedings, and (ii) as soon as practicable in the event of casualty. Should Buyer so terminate this Agreement, then all Earnest Money paid by Buyer hereunder shall be returned to Buyer within ten (10) business days of such termination and, thereupon, the parties shall be released from their respective obligations and liabilities hereunder, except for such provisions that by the express terms hereof survive any termination of this Agreement. In the event Buyer does not elect to terminate this Agreement because of such taking or casualty, then at the Closing, Seller shall assign to Buyer all of Seller's right, title and interest in any award arising out of such taking, or any insurance proceeds arising out of such casualty. For the purposes of this Paragraph, a "substantial" portion of the Property shall be such a part which makes the remainder of the Property unsuitable for the use contemplated by Buyer.

19. **Miscellaneous.**

(a) *Binding Effect.* This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, which assignment must be approved by Seller, consent not to be unreasonably withheld, delayed or conditioned.

(b) *Survival.* All the representations, warranties, covenants, terms and conditions of this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the deed and the payment of the Purchase Price. Notwithstanding the foregoing, the representations, warranties, covenants set forth in Section 11(a) hereof shall survive only for the period set forth in Section 11(a).

(c) *Entire Agreement.* This Agreement supersedes all prior discussions and agreements between Buyer and Seller with respect to the purchase and sale of the Property and other matters contained herein and contains the sole and entire understanding between Buyer and Seller with respect thereto.

(d) *Modification.* This Agreement shall not be modified or amended except by an instrument in writing executed by Seller and Buyer.

(e) *Applicable Law.* This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

(f) *Counterparts; Electronic Transmission.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Execution of this Agreement may be confirmed by the exchange or transmission of one or more signature pages in PDF or JPG format via email, and any signature page so transmitted shall be considered to have the same legal and binding effect as any original signature page.

(g) *Time.* Time is and shall be of the essence of this Agreement. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline that is set forth in this Agreement falls on a day that is not a business day, then such date shall be automatically extended to the next business day. For purposes of this Agreement, a "business day" is any day that is not a Saturday, Sunday or federal legal holiday.

(h) *Effective Date.* The effective date of this Agreement (the "**Effective Date**") shall be later of the respective dates on which Seller or Buyer party executes and delivers this Agreement to the other, and upon such execution and delivery either party may enter the Effective Date upon the face page of this Agreement.

20. **Special Stipulations.**

(a) *Confidentiality.* Subject to requirements of the Georgia Open Records Act, until public vote on this transaction by the Fulton County Board of Education or by the City Council of the City of Fairburn, whichever first occurs, and except as required by law or court order, Seller shall use good faith efforts not to disclose the existence, subject matter, terms or status of this Agreement to any person other than its officers, employees, attorneys, accountants and other professionals and, in each case on a need-to-know basis and under a similar, good-faith duty of confidentiality.

(b) *Exclusivity.* Upon the execution of this Agreement by Buyer and Seller, Seller shall terminate any and all discussions and negotiations with any other prospective purchaser of the Property until this Agreement is terminated or consummated in accordance with the terms hereinabove.

(c) *Escrow.* If there is any dispute as to whether Escrow Agent is obligated to deliver the Earnest Money, including any other monies or documents which it holds, or as to whom the same are to be delivered, Escrow Agent will not be obligated to make any delivery, but in such event, may hold the same until receipt by Escrow Agent of an authorization, in writing, signed by Seller and Buyer directing the disposition of same, and if either party would be entitled to the Earnest Money, or other monies or documents held by Escrow Agent, the parties shall promptly execute such joint written authorization upon the request of any party hereto. In the absence of such authorization, Escrow Agent may hold the Earnest Money, or other monies or documents in its possession until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit said funds or documents into the registry of a court of competent jurisdiction, pending such determination. Notwithstanding the foregoing, if this Agreement is terminated pursuant to Section 14(b), Escrow Agent shall return the Earnest Money to Buyer without the need for joint written instructions. Escrow Agent shall not be responsible for any acts or omissions of Escrow Agent, unless same are a result of the gross negligence, willful misconduct or fraud of Escrow Agent. Otherwise, provided Escrow Agent acts in accordance with this Agreement, Escrow Agent shall have no liability following the delivery of any funds or documents which Escrow Agent holds pursuant to this Agreement. If Escrow Agent elects to bring an appropriate action or proceeding in accordance with the terms of this Agreement, then Escrow Agent shall be entitled to recover all of its reasonable attorneys' fees and costs incurred in connection with the action from the party not entitled to receive the Earnest Money or other monies or documents as determined by a court of competent jurisdiction. The parties will hold Escrow Agent harmless from and, to the extent allowed by applicable law, indemnify it against any costs or liabilities, including reasonable attorneys' fees, resulting from any action brought against Escrow Agent in connection with this Agreement or the funds held hereunder, unless due to Escrow Agent's willful misconduct, gross negligence, or fraud.

[Signatures on following page]

IN WITNESS WHEREOF, Seller and Buyer have caused this Intergovernmental Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

SELLER:

CITY OF FAIRBURN, GEORGIA,
a Georgia municipal corporation

By: Elizabeth Carr-Hurst
Elizabeth Carr-Hurst, Mayor

Attest: Shana T. Moss (Seal)
Shana T. Moss, Interim City Clerk

Approved As To Form:
William R. Turner
William R. Turner, City Attorney

Notice Address:
City of Fairburn
Attention: Mayor
56 Malone Street
Fairburn, Georgia 30213

With a copy to:
William R. Turner, City Attorney
Turner Ross Germain LLC
2265 Roswell Road, Suite 100
Marietta, Georgia 30062
rturner@lawtrg.com

[Signatures continued on following page]

[BUYER'S SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

BUYER:

FULTON COUNTY BOARD OF EDUCATION

By: Linda Bryant
Name: Linda P. Bryant
Title: Board Chair/President
Date: 6/14/19

By: Cindy Loe
Name:
Title: Interim Superintendent
Date: 6-14-19

WCB

NK

Sworn to and subscribed before me
This the 14 day of June, 2019.

Brandi R Casey
Notary Public

My Commission Expires: 4/22/2023

(Notary Seal)

BRANDI R CASEY NOTARY EXPIRES GEORGIA APR 22, 2023 PUBLIC COBB COUNTY

Notice Address:
Fulton County Schools
Office of Land Management
6201 Powers Ferry Road, NW
Atlanta, GA 30339
Attn: William C. Boyajan, Director of Land Management
Tel.: (470) 254-2213
boyajanwc@fultonschools.org

With a copy to:
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.
Tel.: 404.322.6139
cheryl.shaw@nelsonmullins.com

[ESCROW AGENT'S SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

The undersigned agrees to act as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: Cheryl P Shaw /6.1.13

Cheryl V. Shaw, Esq.

Notice Address:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.
Tel.: 404.322.6139
cheryl.shaw@nelsonmullins.com

EXHIBIT "A"
Property Legal Description

All that tract or parcel of land lying and being in Land Lot 66 of the 9F District, Fulton County, Georgia, and being more particularly described as follows:

Commencing at a point at the intersection of the western right-of-way of Shaw Drive (50' right-of-way) and the northern right-of-way of Fairview Drive (50' right-of-way), Thence along said right-of-way of Shaw Drive, North 14 degrees 18 minutes 14 seconds West a distance of 175.01 feet to a point, said point being the TRUE POINT OF BEGINNING. Thence continuing along said right-of-way the following two courses and distances: North 14 degrees 18 minutes 14 seconds West a distance of 31.99 feet to a 1/2-inch open top pipe found; North 14 degrees 14 minutes 23 seconds West a distance of 167.38 feet to a 5/8-inch rebar set at the terminus of the right-of-way of Shaw Drive; Thence crossing said right-of-way, North 75 degrees 26 minutes 33 seconds East a distance of 50.29 feet to a 5/8-inch rebar set on the eastern right-of-way of Shaw Drive; Thence along said right-of-way, South 14 degrees 14 minutes 20 seconds East a distance of 199.59 feet to a 5/8-inch rebar set; Thence leaving said right-of-way, South 75 degrees 41 minutes 46 seconds West a distance of 50.25 feet to a point located on the western right-of-way of Shaw Drive, said point being the TRUE POINT OF BEGINNING.

Said tract of land contains 0.230 Acres.

Exhibit B

Form of Quitclaim Deed

After Recording Return To:

Tax Parcel: None assigned (Abandoned Right-of-Way: Portion of Shaw Drive)

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.

QUITCLAIM DEED

STATE OF GEORGIA

COUNTY OF FULTON

THIS INDENTURE, made this ___ day of ____________, 2019 between **CITY OF FAIRBURN**, a Georgia municipal corporation ("**Grantor**") and the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia ("**Grantee**") (the terms "Grantor" and "Grantee" to mean and include their respective successors and assigns).

WITNESSETH:

THAT Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, at and before the sealing and delivery of these presents, has granted, bargained, sold, and does by these presents, bargain, sell, remise, release, and forever QUITCLAIM unto Grantee all the right, title, interest, claim, or demand which Grantor has or may have in and to the following described property, to wit:

> All that tract or parcel of land lying and being in Land Lot 66 of the 9F District of Fulton County, Georgia, and being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**").

TOGETHER WITH all the rights, members, and appurtenances to the said described Property in anywise appertaining or belonging.

TO HAVE AND TO HOLD the said Property unto the said Grantee so that neither the Grantor nor its successors or assigns nor any other person or persons claiming under Grantor shall at any time claim or demand any right, title, or interest to the said Property or its appurtenances.

IN WITNESS WHEREOF, the said Grantor has signed and sealed this Deed as of the day and year above written.

Signed, sealed and delivered
in the presence of:

____
Unofficial Witness

____
Notary Public

Commission Expiration Date:

____

[NOTARIAL SEAL]

GRANTOR:

CITY OF FAIRBURN, GEORGIA,
a Georgia municipal corporation

By:_____________________________(seal)
Elizabeth Carr-Hurst, Mayor

Attest:_____________________
Shana Moss, Interim City Clerk

____
William R. Turner, City Attorney

Exhibit C

Form of Owner's Affidavit

OWNER'S AFFIDAVIT

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before me the undersigned officer, _______________ ("**Deponent**"), who, being duly sworn according to law, deposes and says on oath as follows, to the best of Deponent's actual knowledge:

1. That Deponent is the ______________(Title) of **CITY OF FAIRBURN**, a Georgia municipal corporation (the "**Owner**"), and as such, has personal knowledge of the facts sworn to in this Affidavit.

2. That the Owner is the owner of certain real estate (the "**Property**"), a description of which is attached hereto as Exhibit A and made a part hereof subject to the matters described on Exhibit B.

3. The Owner is in open, exclusive, notorious, continuous, adverse and peaceable possession of the Property, and Deponent knows of no one claiming any adverse interest in the Property.

4. That the Owner entity is in full force and effect and no proceeding is pending for its dissolution or annulment.

5. That no real estate broker's services have been engaged by Owner in connection with the management, sale, purchase, lease, option or other conveyance of any interest in the Property, that no fees are owed by Owner for any such services, and that no notice of lien for any such services has been received by Owner.

This affidavit is made to induce Fulton County Board of Education to purchase the Property, the attorney certifying title to so certify and First American Title Insurance Company to issue an owner's title insurance policy with respect to the Property.

_________________________________(SEAL)
Deponent

Sworn to and subscribed before me
this ___ day of _________, 2019.

____
Notary Public
(NOTARY SEAL)