

(Do Not Write Above This Line)

12-*P*-0295

RESOLUTION
BY CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING THE CITY OF ATLANTA, AS A JOINT VENTURE MEMBER OF THE ATLANTA-FULTON COUNTY WATER RESOURCES COMMISSION AND CO-OWNER OF THE NORTH FULTON WATER TREATMENT PLANT, TO ENTER INTO AN INTERGOVERNMENTAL LEASE AGREEMENT WITH THE CITY OF JOHNS CREEK, GEORGIA TO LEASE A CERTAIN TRACT OF LAND AS PART OF THE AUTREY HILL NATURE PRESERVE; AND FOR OTHER PURPOSES.

ADOPTED BY

MAR 19 2012

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

FINAL COUNCIL ACTION

2nd

1st & 2nd

3rd

Readings

Consent

V Vote

RC Vote

CERTIFIED

MAR 19 2012

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
MAR 19 2012

Paul Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

MAR 28 2012

WITHOUT SIGNATURE
BY OPERATION OF LAW



CITY COUNCIL
ATLANTA, GEORGIA

A RESOLUTION
BY CITY UTILITIES COMMITTEE

12-*R*-0295

A RESOLUTION AUTHORIZING THE CITY OF ATLANTA, AS A JOINT VENTURE MEMBER OF THE ATLANTA-FULTON COUNTY WATER RESOURCES COMMISSION AND CO-OWNER OF THE NORTH FULTON WATER TREATMENT PLANT, TO ENTER INTO AN INTERGOVERNMENTAL LEASE AGREEMENT WITH THE CITY OF JOHNS CREEK, GEORGIA TO LEASE A CERTAIN TRACT OF LAND AS PART OF THE AUTREY MILL NATURE PRESERVE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") and Fulton County, Georgia ("County") jointly own certain land ("Property"), located in Land Lots 137,138,139 and 140, First District, First Section, Fulton County, Georgia, and own and operate a water treatment facility, known as the North Fulton Water Treatment Plant ("NFWTP"), located within the City of Johns Creek, Georgia; and

WHEREAS, the City and County jointly own and operate the NFWTP through a joint venture agreement, doing business as the Atlanta-Fulton County Water Resources Commission ("AFCWRC"); and

WHEREAS, a portion of the Property is currently maintained as passive greenspace ("Greenspace"); and

WHEREAS, the Greenspace is located adjacent to a public park, known as the Autrey Mill Nature Preserve & Heritage Center ("Autrey Mill Nature Preserve"); and

WHEREAS, the property comprising the Autrey Mill Nature Preserve is owned and operated by the City of Johns Creek ("Johns Creek"); and

WHEREAS, City and County, by and through the AFCWRC, desire to lease the Greenspace to Johns Creek for the purpose of maintaining the Greenspace in its current natural state;

WHEREAS, AFCWRC and Johns Creek have agreed to the terms and conditions of an intergovernmental lease agreement, as more particularly described and attached to this Resolution as **Exhibit "A"** ("Lease");

WHEREAS, the Board of Commissioners of the AFCWRC voted to approve and recommend the Lease on December 8, 2011; and

WHEREAS, Commissioner of the Department of Watershed Management recommends approval of the Lease.



THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor, his authorized designee, and the authorized representative of the AFCWRC is authorized to execute, on behalf of the city, as a co-owner of the Property and a joint venture member of the AFCWRC, the Lease with Johns Creek; and

BE IT FURTHER RESOLVED, that the Lease will not become binding upon the City, and the City will incur no liability under the Lease until it has been duly executed by the AFCWRC, and attested to by all other parties on the Lease, and delivered to Johns Creek.

BE IT FINALLY RESOLVED, that all resolutions in conflict with this resolution are hereby waived to the extent of the conflict.

A true copy,

Deputy Municipal Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

MAR. 19, 2012
MAR. 28, 2012

EXHIBIT "A"



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

THIS LEASE AGREEMENT (“Lease”) is made and entered into this ____ day of _____, 2012 (“effective Date”), by and between the **CITY OF ATLANTA**, a political subdivision of the State of Georgia (“Atlanta”), **FULTON COUNTY**, a political subdivision of the State of Georgia (“Fulton”), collectively Atlanta and Fulton are referred to as “Lessor” and the **CITY OF JOHNS CREEK**, a municipal corporation of the State of Georgia (“Johns Creek” or “Lessee”), collectively Lessee and Lessor are referred to as the “Parties.”

BACKGROUND

Atlanta and Fulton jointly own certain property located in LL _____ of the ____ District of Fulton County, Georgia, having a tax identification number in Fulton County of _____ (“Property”). The Property is used to operate and maintain a water treatment plant, known as the “Atlanta Fulton County Water Treatment Plant” (“Plant”) by and through a joint venture partnership between Atlanta and Fulton, known as the Atlanta Fulton County Water Resources Commission (“AFCWRC”). A portion of the Property is currently maintained as passive greenspace, which greenspace is more particularly described in **Exhibit “A”** of this Lease, attached and incorporated herein by reference (“Premises”). The Greenspace is located adjacent to a public park, known as the Autrey Mill Nature Preserve & Heritage Center (the “Park”). The Park is owned and operated by Johns Creek. Atlanta and Fulton, by and through the AFCWRC, desire to lease the Premises to Johns Creek for the purpose of maintaining the Premises in its current natural state according to the terms and conditions described below.

NOW THEREFORE in consideration of the mutual covenants contained herein as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Authority.** Lessor and Lessee have the authority to enter into and perform the terms and conditions of this Lease pursuant to the legislative authority granted by the respective governing bodies of Lessor and Lessee, which legislative authority of Lessor and Lessee is attached collectively as **Exhibit “B”**.
2. **Term.** The term of this Lease shall be for twenty-five (25) years commencing on the Effective Date of this Lease, subject to the termination provision contained in Section 10, below. At the end of such term, Lessor and Lessee may agree to renew the Lease for an additional five (5) year term.
3. **Rent.** Lessee shall pay Lessor a fee of ten (\$10.00) annually for the use of the Property.
4. **Use of Premises.**

4.1 Lessor hereby grants Lessee the right to use the Premises in accordance with the terms and conditions of this Agreement. Lessee shall maintain the Premises in its natural state, free and clear of any hazards created by debris and/or other hazards created by dead, diseased trees or other natural occurrences and in a neat and orderly manner. All uses of the Premises shall be limited to passive recreational uses.

4.2 No improvements shall be permitted on the Premises without the express written consent of Lessor, provided that Lessee may be permitted to repair and/or improve the existing structure, known as the Stone Chapel, to a safe condition, free and clear of any hazards. Lessee shall be permitted to place only temporary, removable facilities and equipment on the Premises so long as such facilities are consistent with the uses permitted herein. Lessee shall be solely responsible for the maintenance and security of such fixtures and shall remove such fixtures upon the termination of this Lease.



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

4.3 Use of Premises shall not include any land disturbing activities, using mechanized or other equipment that would require a land disturbance permit. All such activity by Lessee on the Premises shall be consistent with and shall not interfere with Lessor's intended use of the Property.

4.4 Lessor expressly reserves all rights and interests to its ownership of the Property and superior use of the Property for its intended use for water and sewer purposes and in no way relinquishes such interest by way of this Lease. Lessee expressly acknowledges that the permissions granted in this Lease in no way constitutes a dedication or use of the Premises as a public park; and further acknowledges that such permissions granted in this Lease are expressly conditioned and subject to Lessor's interest and uses of the Property.

4.5 Lessee shall comply with all applicable state, local and federal laws, regulations, policies and procedures in its use of the Premises.

4.6 Lessee shall be responsible for all funding, equipment and supplies for the maintenance, repair, improvements and general upkeep of the Premises, according to this Lease.

4.7 Under no circumstances shall Lessee knowingly permit illegal activity to occur in conjunction with the use of the Premises nor shall alcoholic beverages be permitted on the Premises.

5. Employees. Any personnel employed by, volunteering on behalf of, or contracted with by Lessee shall be deemed "employees," "volunteers" or independent contractors respectively of Lessee, and shall not be deemed employees or volunteers of Lessor.

6. Records, Audit and Inspection. Lessee shall maintain records and accounts in direct connection with the performance of this Lease for a period of three (3) years from the expiration or termination of this Lease. Lessor and its designated agents and representatives shall have the right to examine and copy such records and accounts at all reasonable times, with advance notification, and such right shall survive for up to three (3) years following the expiration or termination of this Lease. Lessor further shall have the right to access and inspect the Premises at any time and without notice for the purpose of ensuring compliance with this Lease.

7. Benefits to the Parties. Lessor acknowledges and the Parties agree that the use of the Premises, as contemplated by this Lease will substantially benefit Lessor through Lessee's management of the Premises in its natural state and will provide great benefits to the surrounding community. Lessor further acknowledges and agrees that the benefits gained from uses permitted in this Lease are sufficient consideration for the rights and permissions granted herein.

8. As-is. Lessor shall tender the Premises for Lessee's use in an "as-is" condition. Lessor shall not be responsible for any improvements to the Premises that Lessee may deem necessary for Lessee's use of the Premises, specifically including without limitation, utilities to the Premises.

9. Sublessees. Lessee shall be permitted to sublease the Premises to any person or entity, provided that Lessee include and enforce the following in any sublease for such purpose:

- a. Sublessee shall be obligated to comply with all terms and conditions of this Lease, which shall be incorporated into the sublease agreement;



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

- b. Sublessee shall agree to defend, indemnify and hold harmless Lessor, its agents, successors and assigns from and against any and all demands, claims, payments, obligations, actions or causes of action, losses, damages, penalties, fines, liabilities, costs and expenses, including without limitation, all claims, loss and damage arising from any property damage, injury or claim of injury to, or death of, any person arising from the use of the Premises. In addition, Lessee agrees to obtain the same indemnification from any independent contractors operating the Premises on its behalf in favor of Lessor.
- c. Sublessee must obtain and maintain general liability insurance policy during the course of the sublease, and properly endorse policies to name Lessor as an additional insured in accordance with the following:

Sublessee shall provide an insurance certificate to Lessor, listing Lessor as an additional insured and evidencing coverage below and shall request its agents, contractors and other persons accessing the Premises on their behalf for the same as follows:

Commercial General Liability Insurance - \$2,000,000.00;

Automobile Liability Insurance - \$2,000,000.00; and

Worker's Compensation Insurance – Statutory Limits.

The certificate must also state that the insurance cannot be cancelled or modified without at least thirty (30) days prior notice to Lessor. This obligation will continue for the entire term of this Lease.

10. Termination. This Lease shall terminate in the event any material breach of this Lease is not cured by Lessee within thirty (30) days following receipt of notice from Lessor of such breach. Lessor may terminate this Lease for convenience upon providing Lessee with ninety (90) days written notice to Lessee upon Lessor's determination that Lessor has a need to utilize the Premises for a water or sewer purpose which, in Lessor's sole determination and discretion, would require Lessee to discontinue its use. Upon such determination that the uses and permissions granted herein are inconsistent with Lessee's uses of the Premises, and after providing notice to Lessee, Lessee shall cease all use of the Premises, vacate the Premises and remove all temporary facilities, equipment and belongings of Lessee from the Premises. At such time, Lessee shall leave the Premises in as good condition as existed at the time it assumed use of the Premises. However, nothing set forth in this Section 10 shall require Lessee to remove or relocate the Stone Chapel from the Premises. Lessor may terminate the Lease immediately upon discovery of any activity on the Premises that poses a direct and imminent threat to the health, safety, general welfare of Lessor's citizens or the security and critical operations of the Plant. Lessee may terminate this Lease for convenience upon providing Lessor with ninety (90) days written notice.

11. Notices:

All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air Note or overnight courier, or by hand delivery by reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party may from time to



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

time and at any time change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Parties any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

In the case of Lessor to:

Fulton County
141 Pryor Street, SW, Suite 6001
Atlanta, GA 30303
404-612-7400

Attn: Public Works Director

With a copy to:

Fulton County Attorney
141 Pryor Street, SW, Suite 4056
Atlanta, GA 30303

And

City of Atlanta
55 Trinity Avenue, Suite 5400
Atlanta, Georgia 30303
Attn: Commissioner
404-330-6081
404-658-7194

With a copy to:

City Attorney
68 Mitchell St., Suite 4100
Atlanta, Georgia 30303
AFWRC

In the case of the Lessee to:

City of Johns Creek
Attn: City Manager
12000 Findley Rd., Suite 400
Johns Creek, Georgia 30097
(678)512-3200

With a copy to:

City Attorney
12000 Findley Rd., Suite 400
Johns Creek, Georgia 30097
(678)512-3200



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

12. Miscellaneous Provisions.

ENTIRE AGREEMENT

This Lease supersedes all prior discussions and agreements among the parties with respect to the subject matter hereof. This Lease shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this Lease is executed and specifically referencing such a modification or amendment.

BINDING EFFECT

This Lease shall injure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.

SEVERABILITY

In the event any provision or portion of this Lease is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.

FURTHER ASSURANCES

On and after the Effective Date, each Party shall, at the request of any other, make, execute and deliver or obtain and deliver all such certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which any Party may reasonably require to effectuate the provisions and the intentions of this Lease.

CAPTIONS

All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular paragraphs and subparagraphs by number refer to the text of the paragraphs or subparagraphs so numbered in this Lease.

GENDER

Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

EXHIBITS

Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is, and shall be, construed to be made a part of this Lease 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 at length every time it is referred to or otherwise mentioned.



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

CITY OF JOHN'S CREEK

Mayor

ATTEST:

City Clerk (Seal)

Approved as to form:

City Attorney



**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**

REFERENCES

All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraphs of this Lease. Unless otherwise specified in this Lease, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like or similar import shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

RIGHTS CUMULATIVE

Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

AMENDMENT AND ASSIGNMENT

The interest of the parties may not be assigned without prior written consent from the other party. This Lease shall not be amended except in writing by both parties.

GOVERNING LAW

This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of laws thereof. The Parties hereby fix jurisdiction and venue for any action brought with respect to this Lease in Fulton County, Georgia.

NO PARTNERSHIP

This Lease shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities on any Party. Furthermore, no Party shall have any right, power or authority to enter into any Lease or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.

TIME OF ESSENCE

Time is and shall be of the essence in this Lease.

WAIVER

The failure of any Party to seek redress for any violation of, or to insist upon the strict performance of, any term of this Lease will not prevent a subsequent violation of this Lease from being actionable by such Party.

**LEASE AGREEMENT FOR A TRACT OF LAND
LOCATED ADJACENT TO THE
AUTREY MILL NATURE PRESERVE & HERITAGE CENTER**



IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their duly authorized officials, the day and year first above written.

LESSOR

CITY OF ATLANTA

Mayor

ATTEST:

Municipal Clerk (Seal)

Approved:

**Commissioner, Department of
Watershed Management**

Approved as to form:

City Attorney (by Assistant City Attorney)

FULTON COUNTY

Chair, Board of Commissioners

ATTEST:

Clerk to the Commission

Approved as to form:

County Attorney

RCS# 1815
3/19/12
3:34 PM

Atlanta City Council

CONSENT I

3/19/2012 ATLANTA CITY COUNCIL AGENDA
ALL EXCEPT 12-O-0358/0359/0361/0360
ADOPT

YEAS: 11
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	NV Bond
NV Hall	Y Wan	B Martin	NV Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	03-19-12 ITEMS ADVERSED ON CONSENT
1. 12-O-0218 2. 12-O-0219 3. 12-O-0236 4. 12-O-0353 5. 12-O-0240 6. 12-O-0241 7. 12-O-0242 8. 12-O-0243 9. 12-O-0365 10. 12-O-0190 11. 12-O-0232 12. 12-O-0151 13. 12-O-0150 14. 12-O-0152 15. 12-O-0194 16. 12-R-0299 17. 12-R-0300 19. 12-R-0301 20. 12-R-0302 21. 12-R-0303 22. 12-R-0304 23. 12-R-0305 24. 12-R-0308 25. 12-R-0309 26. 12-R-0310 27. 12-R-0312 28. 12-R-0313 29. 12-R-0314 30. 12-R-0315 31. 12-R-0366 32. 12-R-0293 33. 12-R-0294 34. 12-R-0295 35. 12-R-0297 36. 12-R-0290 37. 12-R-0367 38. 12-R-0348 39. 12-R-0364 40. 12-R-0343	41. 12-R-0344 42. 12-R-0317 43. 21-R-0318 44. 12-R-0319 45. 12-R-0320 46. 12-R-0321 47. 12-R-0322 48. 12-R-0323 49. 12-R-0324 50. 12-R-0325 51. 12-R-0326 52. 12-R-0327 53. 12-R-0328 54. 12-R-0329 55. 12-R-0330 56. 12-R-0331 57. 12-R-0332	58. 12-R-0333 59. 12-R-0334 60. 12-R-0335 61. 12-R-0336 62. 12-R-0337 63. 12-R-0338 64. 12-R-0339 65. 12-R-0340 66. 12-R-0341 67. 21-R-0342