

ID# 3018

13- R-3666

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

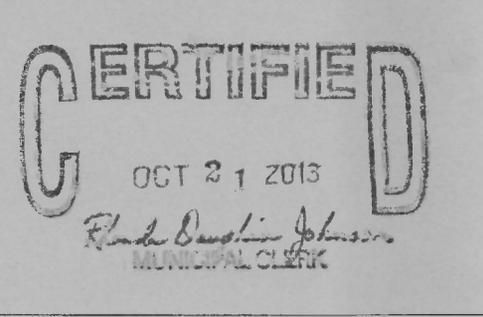
FINAL COUNCIL ACTION  
 2<sup>nd</sup>  1<sup>st</sup> & 2<sup>nd</sup>  3<sup>rd</sup>  
Readings  
 Consent  V Vote  RC Vote

A RESOLUTION  
BY CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR  
TO EXECUTE AN AMENDED AND RESTATED  
WHOLESALE WASTEWATER SERVICES  
AGREEMENT BETWEEN THE CITY OF  
COLLEGE PARK AND THE CITY OF  
ATLANTA; AND FOR OTHER PURPOSES.

Committee City Utilities  
Date Oct. 15, 2013  
Chair [Signature]  
Action [Signature]  
Fav. Adv, Hold (see rev. side)  
POther  
Members  
[Signature]  
[Signature]

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action \_\_\_\_\_  
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Other \_\_\_\_\_  
Members \_\_\_\_\_



ADOPTED BY  
OCT 21 2013  
COUNCIL

Refer To \_\_\_\_\_  
Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
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Members \_\_\_\_\_  
Refer To \_\_\_\_\_

MAYOR'S ACTION  
APPROVED  
OCT 30 2013  
WITHOUT SIGNATURE  
BY OPERATION OF LAW

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1<sup>ST</sup> ADOPT 2<sup>ND</sup> READ & REFER
- PERSONAL PAPER REFER

Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_



**A RESOLUTION  
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED WHOLESALE WASTEWATER SERVICES AGREEMENT BETWEEN THE CITY OF COLLEGE PARK AND THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("Atlanta") and the City of College Park ("College Park") entered into an agreement for the provision of wastewater services to College Park, dated May 12, 1978, with a term of fifty (50) years ("1978 Agreement"); and

**WHEREAS**, pursuant to the 1978 Agreement, College Park collects and transmits sewer flows to Atlanta for the purpose of collection and treatment within Atlanta's wastewater treatment and collection system ("System"); and

**WHEREAS**, pursuant to the 1978 Agreement, College Park is required to pay Atlanta for College Park's share of Atlanta's operating and maintenance costs related to the System, calculated according to College Park's percentage of reserved capacity in the System ("O & M Costs"); and

**WHEREAS**, pursuant to the 1978 Agreement, College Park is required to pay its share of the costs related to capital improvements made to the System, calculated according to College Park's percentage of reserved capacity in the System; ("Capital Improvement Costs"); and

**WHEREAS**, the parties recognized that the 1978 Agreement contains outdated and obsolete terms and conditions, inconsistent with the parties' current and desired practices; and

**WHEREAS**, the parties renegotiated the terms and conditions of the 1978 Agreement that includes an option to pay for wastewater services in accordance with a wholesale wastewater services rate, updating the list of facilities used to provide wastewater services to College Park and updating the reserved capacity for facilities used to provide wastewater services to College Park; and

**WHEREAS**, the Commissioner of the Department of Watershed Management recommends approval of the Amended and Restated Wholesale Wastewater Services Agreement.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the Mayor is authorized to enter an Amended And Restated Wholesale Wastewater Services Agreement Between the City of College Park and the City of Atlanta in substantial form as **Exhibit "A"** ("Amended Agreement"); and

**BE IT FURTHER RESOLVED**, that the term of the Amended Agreement shall be for a period of fifteen (15) years with seven (7) additional five (5) year renewal options, at the option of the parties; and



**BE IT FURTHER RESOLVED**, that all amounts related to the Amended Agreement shall be deposited into Fund Department Organization and Account Number 5051 (Water & Wastewater Revenue Fund), 000002 (General Revenue Org), 3442558 (Opr Plant Chgs – College Park), and 0000000 (Default); and

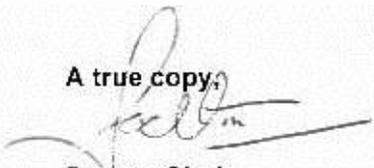
**BE IT FURTHER RESOLVED**, that the Amended Agreement will not become binding on the City, and the City will incur no obligation or liability under them until they have been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to the City of College Park, Georgia; and

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

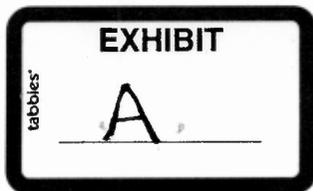
A true copy,

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

OCT 21, 2013  
OCT 30, 2013



Deputy Clerk



**AMENDED AND RESTATED CITY OF COLLEGE PARK, GEORGIA  
and CITY OF ATLANTA, GEORGIA**

**WHOLESALE WASTEWATER SERVICES AGREEMENT**

THIS WASTEWATER SERVICES AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (“Effective Date”) by and between the CITY OF COLLEGE PARK (“College Park”), a municipal corporation of the State of Georgia, and the CITY OF ATLANTA (“Atlanta”) a municipal corporation of the State of Georgia. College Park and Atlanta may be referred to individually herein as a “Party” or collectively as “Parties.”

**WITNESSETH:**

**WHEREAS**, each Party hereto is a governmental entity organized and existing under the laws of the State of Georgia, having the legal authority to organize, maintain, and operate systems of sewage in its respective jurisdiction to serve its citizens and others; and

**WHEREAS**, Atlanta currently owns, operates and maintains a wastewater transmission and treatment system (a portion of which is defined as the “Sewer System”) by which Atlanta collects, transmits and conveys, treats and discharges wastewater flows from College Park; and

**WHEREAS**, Atlanta owns, operates and maintains, currently, four wastewater reclamation centers (“WRC”), known as R.M. Clayton, Utoy Creek, South River and Intrinchment Creek WRC’s; and College Park’s wastewater flows are currently received for treatment at Atlanta’s South River WRC; and

**WHEREAS**, College Park owns, operates and maintains the College Park Sewer System (as hereinafter defined); and

**WHEREAS**, Atlanta and College Park did enter into an agreement for the provision of wastewater services to College Park, dated May 12, 1978, with a term of fifty (50) years (“Existing Sewer Service Agreement”); and

**WHEREAS**, College Park desires for Atlanta to continue providing wastewater transmission and treatment services to College Park for its wastewater flows collected from the College Park Sewer System; and

**WHEREAS**, the Parties desire to amend and restate the Existing Sewer Service Agreement and replace it, in full, with this Agreement for the provision of wastewater transmission and treatment services to College Park. To the extent there are any other presently existing agreements between the Parties that contradict this Agreement, the terms and conditions of this Agreement shall govern; and

**WHEREAS**, College Park and Atlanta wish to set forth the terms and conditions



and provide procedures for: (1) the provision of wastewater transmission and treatment services to College Park through the current and future use of the Sewer System; (2) the monitoring of and accounting for wastewater discharges transmitted to the Sewer System from the College Park Sewer System; (3) establishing and paying the rates, fees and assessments for providing such services, including operations and maintenance of the Sewer System and methods of determining and sharing current and future costs of Capital Improvements to the Sewer System; and

**WHEREAS**, College Park and Atlanta, intend with this Agreement to amend and restate the Existing Sewer Service Agreement.

**NOW, THEREFORE**, in consideration of the mutual rights and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do agree as follows:

## **SECTION 1**

### **DEFINITIONS**

The following words, terms, definitions and phrases, wherever used in this Agreement, have the following meaning:

**1.1 APPLICABLE INTEREST RATE.** The interest rate per annum, currently known as the “Discount Rate”, set by the Federal Reserve Board representing the interest rate at which depository institutions borrow money from the Federal Reserve Bank of New York. For purposes of calculating the Applicable Interest Rate under this Agreement, the Applicable Interest Rate at the time that such accrues under this Agreement shall apply, which shall be calculated based on the total number of calendar days during which the interest rate applies and amounts owing remain unpaid, including the original due date of a payment and excluding the day on which a payment, including accrued interest) is paid in full.

**1.2 ATLANTA.** The City of Atlanta, a duly chartered municipal corporation of the State of Georgia, acting through its duly elected official, the Mayor, or his/her designee, the Commissioner of the Department of Watershed Management or any other City official subsequently so designated by Atlanta for purposes of this Agreement.

**1.3 AVERAGE DAILY FLOW.** The total monthly flow of wastewater from College Park metered by the City of Atlanta at the points of entry indicated on **Exhibit “A”** measured using a 24-hour period in gallons, divided by the number of days in the calendar month, and expressed as million gallons per day (mgd).

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

**1.5 CAPITAL IMPROVEMENTS.** Those additions, replacements, or improvements to the Sewer System, which, under generally accepted accounting principles or practices, are considered capital in nature and which are made for the



purpose of repairing, improving, or expanding the Sewer System, as further defined in Section 2 of this Agreement.

**1.6 COLLECTION/TRANSMISSION SYSTEM.** A component of the Sewer System consisting of the sewer lines, storage, pump stations, and sewage force mains which transport flows to a treatment facility or to its influent pumping station, as described on Exhibit "A".

**1.7 COLLEGE PARK.** The City of College Park, a duly chartered municipal corporation of the State of Georgia, acting through its duly elected officials, the Mayor, or his designee, the Director of Public Works or any other City official subsequently so designated by College Park for the purposes of this Agreement.

**1.8 COLLEGE PARK SEWER SYSTEM.** The physical system of sewers, interceptors, pumping stations, and force mains by which College Park collects, conveys, and discharges wastewater into the Sewer System.

**1.9 COMMISSIONER OF THE DEPARTMENT OF WATERSHED MANAGEMENT.** The Commissioner of the Department of Watershed Management of Atlanta or whoever shall in the future perform those functions relative to this Agreement which are now performed by said Commissioner of the Department of Watershed Management.

**1.10 DESIGN CAPACITY.** Flow capacity in millions of gallons per day (hereinafter "mgd") as described in the most recent design study, or any revision thereto, undertaken by the permit holder of said facility, as certified by a professional engineer licensed to practice in the State of Georgia, expressed as Average Daily Flow in a maximum month; provided, however, as to any facility within the Sewer System for which a permit from a regulatory body as to its flow capacity is required or for any facility of the Sewer System not specified in this Agreement, the "Design Capacity" of such facility shall not exceed such permitted flow capacity recognized by the state or federal agency, except as stated in Section 1.19.

**1.11 DIRECTOR OF PUBLIC WORKS.** The Director of Public Works of College Park or whoever shall in the future perform those functions relative to this Agreement which are now performed by said Director of Public Works.

**1.12 ESCROW AGENT.** Escrow agent shall be a state chartered or federally chartered bank having a reported combined capital surplus and undivided profits of at least \$50,000,000, retained pursuant to an escrow deposit agreement among the parties hereto and such escrow agent.

**1.13 GOVERNING AUTHORITY.** As applicable, the Mayor and Council of the City of College Park or the Mayor and Council of the City of Atlanta, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.



**1.14 NPDES PERMIT.** National Pollution Discharge Elimination System (NPDES) Permit issued by the Georgia Environmental Protection Division.

**1.15 PROJECT.** Any project consisting of Capital Improvements to the Sewer System undertaken pursuant to this Agreement.

**1.16 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 insurance, financing charges, and net interest during construction 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 defined by accepted industry standard); any repair or routine maintenance cost; any capital cost provided by federal or state grants contributed to a Project not derived from operations or pursuant to Section 1.15; any sales and use tax amounts refunded; or any cost stemming from a claim, fine or penalty resulting from the negligent or intentional act or omission of Atlanta or of any contractor or agents constructing the Project.

**1.17 RESERVE CAPACITY.** The quantity of wastewater flow, expressed as million gallons per day allocated for use by College Park of the Sewer System. College Park's Reserve Capacity, respectively, for components of the Treatment Facilities and the Collection/Transmission System of the Sewer System at the time of this Agreement is set forth in Section 4.3 of this Agreement, which may be amended, as set forth in Section 2 of this Agreement.

**1.18 REQUIRED FINANCIAL CONTRIBUTION.** The dollar amount payable by College Park to Atlanta with respect to Required Capital Improvements (as defined in Section 2.1 of this Agreement) that shall be equal to (A) the Project Costs for a Project multiplied by (B) College Park's Required Financial Contribution Percent.

**1.19 REQUIRED FINANCIAL CONTRIBUTION PERCENT.** College Park's Reserve Capacity divided by the Design Capacity of the Project or a Design Capacity agreed to by the Parties.

**1.20 SEWER SYSTEM.** The physical system of sewers, pumping stations, force mains, combined sewer tunnels, transmission and collection system, monitoring facilities and wastewater treatment facilities by which Atlanta collects, conveys, treats and discharges wastewater flows from College Park. City of Atlanta facilities within the Sewer System used to treat College Park's sewerage at the time of this Agreement are listed in Exhibit "A." The Parties contemplate that over the course of time it may be necessary that portions of said Sewer System be removed, modified, improved, supplemented or expanded, as provided by this Agreement. Atlanta shall provide College



Park with an updated **Exhibit "A"** to reflect any additions, modifications, deletions or improvements to the Sewer System made in accordance with this Agreement, at least annually, and such additions, modifications, deletions or improvements shall be made part of the Sewer System, as provided by this Agreement, without further amendment to this Agreement.

**1.21 TREATMENT FACILITIES.** A component of the Sewer System consisting of the South River Reclamation Plant, with primary, secondary and tertiary treatment and including an effluent pump station, force and gravity mains and a conveyance tunnel and outfall sewer as described on **Exhibit "A"**.

## SECTION 2

### FUTURE CAPITAL IMPROVEMENTS OF SEWER SYSTEM

**2.1 DETERMINATION TO MAKE REQUIRED CAPITAL IMPROVEMENTS.** Atlanta may make necessary Capital Improvements to the Sewer System from time to time, subject to any applicable approvals of appropriate state or federal regulatory agencies, if (1) 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; (2) if additional capacity is required due to excessive water loads or flows not caused by additional flows introduced by Atlanta subsequent to this Agreement that impede the efficient operation of the Sewer System; or (3) if modifications, improvements, or additions/deletions to the Sewer System are necessary or desirable to provide operations which are more efficient and economical, such improvements, modifications, additions/deletions or process changes shall be deemed "Required Capital Improvements." In the event the Required Capital Improvements result in an increase in Design Capacity, College Park's percentage of Design Capacity related to the Required Capital Improvement will remain unchanged, but the actual Reserve Capacity will increase proportionally. For any Required Capital Improvement to the Sewer System subsequent to the date of this Agreement, College Park shall pay its Required Financial Contribution ("College Park's RFC"). College Park agrees that a determination to make a Required Capital Improvement shall be made by Atlanta and at Atlanta's sole discretion and determination. Should College Park not make payments for a Required Capital Improvement as contemplated by this Agreement, College Park shall not be entitled to any savings that may come as a result of a Required Capital Project unless and until all amounts are paid in full.

For the purpose of long-range planning, the Parties, acting by and through the College Park Director of Public Works and the Atlanta Commissioner of Department of Watershed Management, shall meet annually in January, or more frequently as deemed necessary, to review future Capital Improvements to the Sewer System. The Parties agree that any such meeting will be held within thirty (30) days of a written request from either Party.

**2.2 NOTICE; METHOD OF PAYMENT OF REQUIRED CAPITAL IMPROVEMENTS; ESCROW AGREEMENT.** Upon a determination by Atlanta pursuant to Section 2.1 that a Required Capital Improvement to the Sewer System is necessary, desirable or appropriate, Atlanta shall provide written notice to College Park



of such determination, which notice also shall include Atlanta's then current estimate of the Project Cost of the Project, a projected calculation of the Required Financial Contribution from College Park for such Project, and an estimated time for commencing work on a Project ("Estimated Project Commencement"), which shall be no less than one hundred eighty (180) days from a scheduled notice to proceed for a Project design. Such notice shall also be provided one hundred eighty (180) days prior to an award for construction services for a Required Capital Project, or in the case of a design-build or other integrated process, prior to the award for such design-build project. College Park shall respond in writing acknowledging to the notice of necessity for a Required Capital Improvement within thirty (30) days after the date of the notice of necessity is received and indicate its participation in the Required Capital Improvement Project and if funding will be sought from Georgia Environmental Finance Authority (GEFA) for the Project. Atlanta will notify College Park within thirty (30) days after the response to the notice of necessity for a Required Capital Improvement is received by Atlanta if (1) Atlanta has included funding from GEFA in the funding for the Project and if funding from GEFA will not be sought whether or not Atlanta will assist College Park with its application for GEFA funding, the compliance and reporting required in connection with the proposed use of GEFA funding by College Park. If the response by Atlanta precludes the use of GEFA funds by College Park, College Park shall deposit its Required Capital Contribution in accordance with (1) below.

For Required Capital Improvement Projects for which a construction contract had been executed prior to the date of this Agreement and amounts related thereto are scheduled to be invoiced by Atlanta subsequent to the amounts invoiced and listed on **Exhibit "B"** of the Settlement Agreement and Release dated, \_\_\_, 2013, which such projects are attached hereto as **Exhibit "B"** to this Agreement, College Park shall pay its Required Capital Contribution determined pursuant to Section 1.19 of this Agreement based on billings of College Park's share of such Required Capital Improvement Projects. For Required Capital Improvement Projects not listed on the above referenced **Exhibit "B"** and listed on **Exhibit "C"**, College Park shall pay its Required Capital Contribution as follows:

- (1) Except to the extent Georgia Environmental Finance Authority funding is being sought for use in connection with a Required Capital Improvement Project and Atlanta has indicated that such funds will be used for such Project, College Park shall deposit its Required Financial Contribution no later than 180 days after receipt of notice of award for construction services or prior to the award of a design-build project. College Park shall deposit the Required Financial Contribution in lump sum with a third party Escrow Agent, which shall provide for the following: (a) that the funds in escrow will be invested as directed by College Park; (b) that all investment earnings shall be paid to or at the direction of College Park; (c) that the Escrow Agent shall disburse the escrowed funds monthly upon receipt of a written requisition from Atlanta certifying as to the Project Costs incurred on the applicable Project for which



College Park's applicable Required Financial Contribution has not then been paid (and which will not be paid with state or federal funds) and certifying as to the dollar amount of College Park's Required Financial Contribution with respect to such requisition; (d) that upon any changes (increases or decreases) to the Project Costs, Atlanta will provide notice and College Park shall adjust the Escrow agreement in accordance with Section 2.2.2 of this Agreement within ninety (90) days of receipt of such notice; and (e) that Atlanta shall give College Park written notice and written notice to the Escrow Agent of final completion of a Project, and upon receipt of such final completion notice, the Escrow Agent shall return to College Park any un-disbursed money and investment earnings held in escrow with respect to the completed Project. During the course of the Project construction and upon completion of the Project, adjustments to the estimated Project Cost shall be made in accordance with Section 2.2.2 of this Agreement; and

- (2) In the event College Park funds its Required Financial Contribution using GEFA funding College Park shall not be required to deposit its Required Financial Contribution with a third party Escrow Agent. The GEFA funds shall be requested monthly by College Park upon receipt of a written requisition from Atlanta certifying as to the Project Costs incurred on the applicable Project for which College Park's applicable Required Financial Contribution has not then been paid and certifying as to the dollar amount of College Park's Required Financial Contribution with respect to such requisition. Upon receipt of the GEFA funds, College Park shall remit such funds to Atlanta within three (3) days of receipt. During the course of the Project construction and upon completion of the Project, adjustments to the estimated Project Cost shall be made in accordance with Section 2.2.2 of this Agreement.

**2.2.1 FAILURE TO PAY.** In the event College Park fails to respond in writing and/or fails to deposit the required funds with the Escrow Agent or fails to pay its Required Financial Contribution using GEFA funding in accordance with this Section 2, such failure shall be deemed a material breach of this Agreement; and notwithstanding anything to the contrary under this Agreement, College Park shall also pay Atlanta an amount equal to the Applicable Interest Rate, which shall accrue on all amounts due by College Park for a Required Capital Project unless and until all amounts are paid in full.

**2.2.2 ADJUSTMENTS TO PAYMENTS FOR REQUIRED CAPITAL PROJECTS.** Atlanta and College Park agree that the estimated calculation of the Project Costs for future Capital Improvements and College Park's Required Financial Contribution with respect thereto are subject to change during the course of the Project procurement and construction process to reflect actual costs of the Project. For purposes of determining a "change" in the Project Cost subject to notification under this Section 2.2.2, Atlanta shall notify College Park of any change to the Project that results in an



increase of the Project Cost by 10% or greater (“Change”). This notice shall contain documentation indicating the basis for such change. In the event of a Change in the Project, Atlanta shall notify College Park in writing to include the amount of the Change to the Required Financial Contribution; and College Park shall deposit any increase in the Required Financial Contribution within one hundred twenty (120) days of receipt of notice of such change in Escrow and adjust the Escrow Agreement to reflect such change. A Change resulting in a decrease in the Required Financial Contribution greater than 10% of the Project Cost shall be released to College Park subject to an adjustment of the Escrow Agreement within sixty (60) days of receipt of notice of such Change.

**2.2.3 FINAL PAYMENT SETTLEMENT.** After Atlanta initiates any Capital Improvement pursuant to this Agreement and within one hundred eighty (180) days after Atlanta (a) has certified that construction of the Project has been finally complete pursuant to the Project requirements; (b) receives final payment of all federal or state grant money due Atlanta, if any; (c) makes final payment to the construction contractor(s) and resolution of any appropriate construction claims (not including those claims excluded from the definition of Project Costs in this Agreement); and (d) Atlanta has determined the final Project Costs in accordance with this Agreement, then the mathematical adjustment, if any, of the total Required Financial Contribution payable by College Park shall be made known to College Park. Within one hundred and twenty (120) days of receipt of notice of the final Project Costs, College Park will make any additional payment due to Atlanta representing College Park’s final Required Financial Contribution based on the final Project Costs. Any overpayment of Required Financial Contribution made by College Park in Escrow shall be returned to College Park in lump sum not less than sixty (60) days after receipt of the notice of final Project Costs.

**2.3 OPTIONAL CAPITAL IMPROVEMENTS.** If Atlanta determines that it is desirable to undertake a Capital Improvement Project to the Sewer System that does not meet the definition of Required Capital Project under this Agreement, including but not limited to a capital project for the sole purpose of expanding system capacity, then such project shall be considered an “Optional Capital Improvement Project” under this Agreement. Except as provided below, College Park shall have no Required Financial Contribution obligations for such project. Any increase in design capacity that is incidental to a Capital Project that otherwise meets the definition of a Required Capital Project shall not be considered an “Optional Capital Improvement Project” for purposes of this Agreement.

**2.3.1 NOTICE OF INTENT TO CONSTRUCT AN OPTIONAL CAPITAL IMPROVEMENT PROJECT.** Atlanta shall provide College Park notice of its intent to construct an Optional Capital Improvement Project to the Sewer System no later than one hundred eighty (180) days prior to soliciting bids for the design of the project. Such notice shall include an estimate of the Project Cost, as provided for in Section 2.2. In the event that an Optional Capital Improvement Project results in additional Design Capacity, from which additional Reserve Capacity is offered to College Park, at Atlanta’s sole discretion, College Park may elect to purchase additional Reserve Capacity as may become available as a consequence of the Optional Capital Improvement Project.



**2.3.2 NOTICE OF INTENT TO PARTICIPATE IN AN OPTIONAL CAPITAL IMPROVEMENT PROJECT.** Should College Park elect to participate in any Optional Capital Improvement Project, it shall notify Atlanta within sixty (60) days of receipt of Atlanta's notice provided in Section 2.3.1. The Parties shall agree in writing upon the level of participation in terms of College Park's percentage of "Net Total Project Costs" (which shall be calculated according to the definition and terms of this Agreement) of the Optional Capital Improvement Project. If College Park fails to respond to Atlanta within this sixty day (60) period, such failure shall be deemed an election by College Park to not participate in the Optional Capital Improvement Project. The parties may subsequently agree on the terms and conditions by which College Park may participate in an Optional Capital Improvement Project subsequent to the sixty (60) day period; provided, however, that College Park shall not be entitled to additional Reserve Capacity until such times as College Park pays in full all amounts due to purchase the rights in such additional Reserve Capacity. Upon an agreement for College Park to participate in an Optional Capital Improvement Project, all terms of this Agreement related to payments, calculations of Project Costs and adjustments to the Project Costs shall apply. Any increase in College Park's Reserve Capacity, pursuant to this section, shall require an adjustment of the Required Financial Contribution Percent for any future Projects according to the increase in College Park's Reserve Capacity. This Agreement shall be amended to reflect any change in College Park's Reserve Capacity as a result of actions taken pursuant to this Section 2.3.

**2.4 OWNERSHIP OF THE SEWER SYSTEM.** College Park agrees that the payment of its Required Financial Contribution for any Capital Improvement made under this Agreement and payment of the rates provided in this Agreement constitute consideration paid for College Park's use of the Sewer System and receipt of wastewater transmission and treatment services from Atlanta for College Park's wastewater flows and does not constitute consideration paid for any ownership right or ownership interest, indicia of ownership or other property right in Atlanta's Sewer System except as provided in Section 6.13.1. College Park's use of the Sewer System, as established by this Agreement, shall not be construed, in any fashion, to constitute any transfer of any ownership rights, ownership interest or other property rights in the Sewer System, but rather shall represent a contractual obligation by Atlanta to make such wastewater transmission and treatment capacity available and provide such treatment and transmission services to College Park pursuant to the terms of this Agreement.

**2.5 AUDIT RIGHTS.** Atlanta agrees to maintain records related to Project Costs of Project for a period of five (5) years following the final completion of a Project. At any time within five (5) years following the final completion of a Project in which College Park participated as a Required or Optional Capital Improvement Project, College Park may elect to proceed to obtain a certified audit of the Project Cost, using a licensed certified public accountant, licensed in the State of Georgia, (hereinafter the "Audit"). College Park shall notify Atlanta in writing of its notice to proceed for such Audit and Atlanta agrees to fully cooperate in providing documentation to College Park as may be reasonably necessary to complete the Audit. Any Audit shall be performed at College Park's expense; provided, however, that if any Audit results in a determination of an overpayment by College Park, Atlanta agrees to reimburse College Park the amount of



any identified overpayment and the reasonable actual costs of performing such Audit. If the Audit identifies any underpayment of College Park, College Park agrees to pay Atlanta the amount of the identified underpayment. Any payments identified in this Section 2.5 shall be paid timely by the owing party no later than ninety (90) days after the completion of the Audit.

### SECTION 3

#### OPERATIONS AND MAINTENANCE OF SEWER SYSTEM

##### 3.1 RESPONSIBILITY FOR OPERATIONS AND MAINTENANCE.

Under this Agreement, Atlanta has the responsibility for the operation, maintenance, repair and replacement of all portions of the Sewer System. College Park shall have no responsibility for the cost of construction, operation, maintenance, repair or replacement of any portion of Atlanta's sewer system that is not a component of the Sewer System. College Park shall maintain its sewer system to ensure its flows entering into the Sewer System do not cause failure or material deterioration of the Sewer System or material risk to human life, including, without limitation, ensuring of pH levels between 6.0 and 12.0, and H<sub>2</sub>S levels of 20 parts per million. The Points of Entry of College Park's flows into the Sewer System as of the time of this Agreement are described in Exhibit "A", which shall be updated from time to time by the Director of Public Works and Commissioner of the Department of Watershed Management as changes may occur to the Sewer System, without further amendment to this Agreement. Flows shall be metered as indicated in Section 3.2 below and levels referenced in this paragraph shall be determined in accordance with accepted industry standards.

**3.2 FLOW METERS.** Atlanta shall be responsible for installing, maintaining, repairing, and calibrating flow meters used to determine College Park's flow into the Sewer System wherever practicable, which meter readings shall form the basis of calculating applicable charges to College Park pursuant to this Agreement. The locations of such flow meters, as of the date of execution of this Agreement, are shown on Exhibit "A". This exhibit may be modified from time to time by the Director of Public Works and the Commissioner of Department of Watershed Management as necessary, without further amendment to this Agreement. Should Atlanta's flow meters fail or malfunction, for purposes of calculating appropriate charges, Atlanta shall utilize the flow data from College Park's flow meters, if available and if not utilize the average flows from the same calendar period of the most recent prior calendar year in which Atlanta's meters were properly functioning, to estimate College Park's flows; provided, however, College Park agrees to pay any applicable charges, upon notice from Atlanta, to the extent that Atlanta determines that College Park was under billed and Atlanta agrees to reimburse College Park for any overbilling based upon available actual flow data once meter failures are corrected and to the extent such can be determined. Where flow meters are impractical, flow measurements may be made using accepted industry measurement standards.



Flow meters shall be calibrated no less often than quarterly and appropriate calibration records shall be retained for not less than three (3) years. College Park shall have the opportunity to observe the calibration process, to test the calibration equipment, and to review the calibration records of Atlanta upon written request. Any meter tested and found to be accurate within a ten percent (10%) margin of error shall be considered accurate for billing purposes. College Park has installed a flow meter at the College Park-owned South East Lift Station. Should College Park dispute Atlanta's meter reading, College Park and Atlanta will produce their meter data along with a) a manufacturer's or Professional Engineer's letter that the meter was installed according to manufacturer's specifications and b) a record of meter calibration within the prior three months. If, after a) and b) above are verified for the College Park and Atlanta meter, respectively, and the meter installed by College Park shows discrepancy equal to or exceeding ten percent of Atlanta's calculations, then Atlanta shall average the flow data from the two meters and send an adjusted bill within one month of receiving said information from College Park. College Park and Atlanta shall attempt to resolve all disputes in good faith by and through the Atlanta Commissioner of Watershed Management and the College Park Director of Public Works, in the first instance, before seeking other options that may be available to the Parties; and in such case, College Park agrees to pay all undisputed charges until such dispute is resolved.

**3.3 PROVISION OF DATA.** College Park shall provide Atlanta with water consumption data for the area commonly known as Plant Street, which area is not currently metered for flows ("Un-metered Area"). Monthly water consumption data shall be utilized to calculate appropriate charges for the Un-metered Area. College Park agrees to provide such monthly water consumption data for the billing cycle and shall pay Atlanta all appropriate unpaid flow usage charges associated with the Un-metered Area within thirty (30) days of receipt of a bill from Atlanta for such charges.

Atlanta agrees to provide College Park with monthly water consumption data for those City of Atlanta water customers located within College Park receiving wastewater service by College Park, as such locations are identified and known to the Parties, for the purpose of providing data to College Park for the billing of those customers for sewer services provided by College Park.

## SECTION 4

### USE OF FACILITIES

#### 4.1 DETERMINATION OF RATES.

**4.1.1. Initial Rate.** Beginning September 1, 2009, College Park agrees to pay Atlanta for its wastewater flow entering the Sewer System at an established rate of \$1.66 per 1,000 gallons. ("Initial Rate").

**4.1.2 Rate, Flow Exceeding Reserve Capacity.** The rate for wastewater flows, if any exceeding the Reserve Capacity, for flows subsequent to the date of this Agreement, shall be \$3.50 per 1,000 gallons, which rate is inclusive of a capital



Flow meters shall be calibrated no less often than quarterly and appropriate calibration records shall be retained for not less than three (3) years. College Park shall have the opportunity to observe the calibration process, to test the calibration equipment, and to review the calibration records of Atlanta upon written request. Any meter tested and found to be accurate within a ten percent (10%) margin of error shall be considered accurate for billing purposes. College Park has installed a flow meter at the College Park-owned South East Lift Station. Should College Park dispute Atlanta's meter reading, College Park and Atlanta will produce their meter data along with a) a manufacturer's or Professional Engineer's letter that the meter was installed according to manufacturer's specifications and b) a record of meter calibration within the prior three months. If, after a) and b) above are verified for the College Park and Atlanta meter, respectively, and the meter installed by College Park shows discrepancy equal to or exceeding ten percent of Atlanta's calculations, then Atlanta shall average the flow data from the two meters and send an adjusted bill within one month of receiving said information from College Park. College Park and Atlanta shall attempt to resolve all disputes in good faith by and through the Atlanta Commissioner of Watershed Management and the College Park Director of Public Works, in the first instance, before seeking other options that may be available to the Parties; and in such case, College Park agrees to pay all undisputed charges until such dispute is resolved.

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component and shall be applied, until such time as a New Capital/O&M Rate is established. Thereafter, except as provided in Section 4.4, the rate for flows exceeding Reserve Capacity for treatment shall be at the New Capital/O&M Rate. Payments for amounts due under this subsection shall be due within thirty (30) days of receipt of a bill from Atlanta. For purposes of determining amounts due for “flows exceeding Reserve Capacity,” the applicable rate shall apply only to flows exceeding the respective Reserve Capacities, calculated on an Average Daily Flow basis for a period of time beginning midnight on one calendar day to midnight the following calendar day, representing a twenty-four (24) hour period.

**4.1.3 New Rate.** The Initial Rate will be in effect until a new rate has been established, based on an agreed upon utility industry standard cost of service methodology that Atlanta shall follow in determining new rates (“New Rates”). Such study shall serve to establish at least the following two New Rate categories: (1) a Wholesale Rate, which shall be a Rate established to include, among other applicable components, capital investment costs in the Sewer System not previously shared by College Park (“Capital/O&M Rate”); and (2) a rate inclusive of operational and maintenance costs of the Sewer System and excluding capital costs in the Sewer System as a component of the rate (the “O&M Rate”) (collectively Capital/O & M Rate and O & M Rate may be referred to as “Rates”). Whenever Atlanta deems it necessary to revise either one or both of the Rates, such Rates shall be established pursuant to the process established herein. In such event, Atlanta shall provide written notice to College Park no less than sixty (60) days prior to submittal of such revised Rates to its Governing Authority for approval. Upon approval of such Rates, Atlanta shall notify College Park 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 contained in this Agreement is intended to be construed as affecting or limiting Atlanta’s sole authority to revise its Rates in accordance with the terms set forth herein.

The Initial Rate shall apply to College Park until such time as Atlanta performs a cost of service study to establish the New Rate, which shall be completed within twelve months from the date of this Agreement. All documentation used in a cost of service study shall be available to College Park within ten (10) Business Days of a written request from College Park. Unless otherwise agreed upon by the Parties, the methodology for a cost of service study to establish the New Rates, and any subsequent revision of the Rates, shall comply with the then existing standards of what is entitled as the “Water Environment Federation’s Manual of Practice (MOP27), or their successor; provided that, in any case, the cost of service study shall not include Projects for which College Park has contributed on a project basis prior to and during the term of this Agreement. The New Rates may be applied retroactively as to the date of this Agreement, but only if the cost of service study is completed and is approved by Atlanta’s Governing Authority within the 12-month period following the date of this Agreement. Any New Rate to be applied retroactively during the 12-month period shall be limited to no more than 150% of the Initial Rate. If Atlanta does not complete the cost of service study and obtain approval by its Governing Authority within the 12-month period, then the Initial Rate will continue to apply until the New Rates are established and no retroactive rate



adjustment will be applicable.

**4.2 DETERMINATION AND PAYMENT OF APPLICABLE RATES.**

College Park shall pay the Initial Rate, or any properly established New Rate, plus it's Required Financial Contribution unless and until it elects to pay the Capital/O&M Rate. College Park may elect to pay the Capital/O&M Rate by providing Atlanta with written notice of such election, provided that College Park shall pay for all Required Capital Improvements for Projects commenced prior to such election. Thereafter, Atlanta shall bill College Park according to the Capital/O & M Rate the next full billing cycle following receipt of said notice from College Park. Payments shall be due within thirty (30) days of receipt of such billing.

**4.3 COLLEGE PARK'S RIGHT TO USE THE SEWER SYSTEM.**

**4.3.1 Reserve Capacity for Treatment Facilities.** College Park's Reserve Capacity will entitle College Park to discharge up to the following quantities in the Sewer System Treatment Facilities as set forth below:

<u>Facilities</u>	<u>Reserved (mgd)</u>	<u>Design Capacity Capacity</u>	<u>% of</u>
South River WRC	2.1	49.0	4.29%
South River WRC Influent Pump Station	2.1	49.0	4.29%
South River Effluent Force Main	2.1	80.0	2.63%
Three Rivers Effluent Conveyance Tunnel	2.1	80.0	2.63%
Three Rivers Effluent Conveyance Outfall Sewer	2.1	80.0	2.63%

**4.3.2 Reserve Capacity for Collection/Transmission Facilities.** College Park's Reserve Capacity in the Treatment Facilities entitles College Park to the right to use up to 2.1mgd of the Design Capacity of the Collection and Transmission System as set forth below.

<u>Facilities</u>	<u>Design Capacity (mgd)</u>	<u>% of Capacity</u>
Flint River Pump Station, Flint River Force Main and Gravity Sewer; Hapeville Outfall and College Park Outfall	18	11.67%

The percentage of Capacity and the Reserved Capacity allocated to College Park for use of the Sewer System may not be increased or decreased except by amendment of this Agreement.



**4.3.3 Re-rating of the Design Capacity of Facilities within the Sewer System.** Notwithstanding the provisions of Section 2, in the event that the Design Capacity of a Sewer System facility is re-rated through (1) as a consequence of orders, permits or other Federal or state regulatory requirements, or (2) by operation of the provisions of Section 2.1, College Park's percentage of Capacity in each facility as reflected in Section 4.3.1 and 4.3.2 will remain unchanged, and the actual Reserve Capacity will be increased or decreased proportionally. Atlanta agrees to provide College Park written notice prior to implementing such re-rating calculations under this Agreement.

**4.4 FUTURE EXCESS FLOW.** Upon written notice from Atlanta that the Average Daily Flow received from College Park, based on a 60-day reporting period, reaches 90% of its Reserve Capacity for such facility, College Park must prepare and submit to Atlanta, within 180 days, a written plan which demonstrates how College Park will maintain future flows within the Reserve Capacity, and begin to implement such plan. Should College Park's Average Daily Flows, computed over a 60-day period, exceed its Reserve Capacity, College Park shall immediately take appropriate measures to reduce its flow to within the Reserve Capacity. Continued discharge in excess of the Reserve Capacity, without prior written approval by Atlanta, calculated as a daily average over a 60-day period, will be considered a material breach of this Agreement for which Atlanta is entitled to one or more or all of the following remedies at Atlanta's sole discretion, none of which shall be considered an exclusive remedy: (a) payment of the amount billed to College Park determined by use of the applicable Rate plus a surcharge equal to 25% of the Rate then applied to the amount of the excess flow; (b) payment (or reimbursement) of any and all damages claimed by Atlanta 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 amount not paid when due pursuant to the Applicable Interest Rate; (e) any and all other remedies available at law or equity. If flows continue in excess of the Reserve Capacity for a period of seven (7) consecutive days, and such flows are determined by Atlanta to be causing imminent threat or danger to integrity of the Sewer System or third parties' life or property, then Atlanta may take measures to terminate or by-pass College Park's flows from entering the Sewer System and terminate this Agreement; or suspend this Agreement until such time as the excess flows are remediated by College Park. Any amount payable pursuant to this Section shall be paid by College Park within fifteen (15) days following written demand from Atlanta, which notice shall not serve as a condition of the application of such charges owed under this Section.

**4.5 CONNECTION TO THE SEWER SYSTEM.** College Park shall have the right to make or to permit connections from its customers to its College Park Sewer System. Atlanta shall have the right to make or to permit connections to its Sewer System.

**4.6 CHARGES FOR CONNECTIONS.** College Park shall have the right to make and keep such charges for connections it makes or permits to be made to the



College Park Sewer System. This right shall include the right to contract with other sewer service provider(s) for use of College Park's Sewer System, provided that College Park shall not permit by contract the discharge of flow which will result in College Park exceeding its Reserved Capacity or constitute and violation of any provision of this Agreement.

**4.7 STANDARDS OF ACCEPTABILITY.** College Park shall adopt and enforce standards of acceptability substantially identical to the provisions of Chapter 154, Article V of the City of Atlanta Code of Ordinances (or as they may hereinafter be amended) as the minimum discharge standards into those portions of the College Park Sewer System that flow into the Sewer System. In the event more stringent standards of acceptability are adopted by the State of Georgia or the United States Environmental Protection Agency or their successors, or such other more stringent standards as may be mutually agreed to by Atlanta and College Park, these new Standards of Acceptability will take precedence as the controlling minimum standards.

**4.8 OPERATION AND MAINTENANCE.** Atlanta shall be responsible for the operation and maintenance of the Sewer System in accordance with applicable laws and this Agreement and College Park shall be responsible for the operation and maintenance of the College Park Sewer System in accordance with applicable laws and this Agreement.

**4.9 USE OF COLLEGE PARK'S RESERVE CAPACITY.** Notwithstanding any provision herein to the contrary, commencing on the date this Agreement is executed by the Parties and provided that College Park is not in default of its payment obligation hereunder, College Park shall have the right to sell, lease, or otherwise alienate any portion of its Reserve Capacity in the Sewer System, provided that such sale, lease, transfer or conveyance does not have a negative environmental impact on the Sewer System or permits and any that the transferee under any such sale, lease, transfer or conveyance shall take subject to all of the terms and conditions of this Agreement. College Park may exercise these rights without the consent or approval of the City of Atlanta; provided, however, College Park will provide Atlanta thirty (30) days written notice prior to the effective date of any agreement to transfer, lease, alienate, exchange, or sale Reserve Capacity pursuant to this section.

## **SECTION 5**

### **COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REQUIREMENTS**

**5.1 RESPONSIBILITIES.** Atlanta shall be responsible for implementing, updating, enforcing, monitoring and controlling its sewer use ordinance and industrial pretreatment programs within Atlanta's jurisdictional limits. As to the area within College Park's jurisdictional limits which is connected to the portion of College Park's Sewer System that flows into the Sewer System, standards shall be enforced by College Park in substantial conformance with Atlanta's sewer use ordinance and industrial pretreatment ordinance, as codified in Article V of Chapter 154 of the City of Atlanta City Code of Ordinances as may be amended subsequent to this Agreement, subject to



Atlanta's rights pursuant to Section 5.4 below.

**5.2 REVISIONS.** College Park will amend and/or revise its sewer use ordinance and industrial pretreatment program for those portions of the College Park Sewer System that flow into the Sewer System as may be reasonably necessary to comply with all Atlanta, state and federal requirements and will accept and implement reasonable changes to such ordinance as requested in writing by Atlanta with respect to control of discharges which ultimately will be transmitted or treated by the Sewer System. Any changes necessary to comply with State or Local laws and regulations or to avoid material damage to the Sewer System shall be considered reasonable. When required for compliance with Atlanta's NPDES Permit, as applicable, College Park will revise its ordinance and industrial pretreatment program in a manner reasonably acceptable to Atlanta.

**5.3 ENFORCEMENT AND PERMITTING.** To the extent provided by applicable State laws and College Park sewer use ordinance and industrial pretreatment program and for those portions of the College Park Sewer System that discharge into the Sewer System, College Park agrees to diligently enforce the sewer use ordinance and industrial pretreatment program for users discharging flow into the College Park Sewer System that is connected to the Sewer System. Atlanta will issue permits to all industrial dischargers pursuant to and as required by the ordinance for the pretreatment program and monitoring compliance with the permits. In addition to an immediate verbal and electronic notification, a written report of non-compliant discharges will be provided by Atlanta or College Park, when known, to the other Party within forty-five(45) business days of any such known non-compliance. Atlanta will incorporate the Agreement with College Park by reference in the issued permit.

**5.4 FAILURE TO ENFORCE.** In the event College Park fails to take reasonable pretreatment enforcement action on a timely basis and fails to remedy any such violations of the sewer use and industrial pretreatment standards referenced in this Section in a reasonable time after a written notice by Atlanta, Atlanta may pursue any and all remedies available to Atlanta at law or in equity.

**5.5 OTHER JURISDICTIONS.** Before an industrial user located outside the jurisdictional boundaries of College Park discharges wastewater into the College Park Sewer System for transmission and treatment through the Sewer System, College Park 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 regarding industrial pretreatment programs, and such agreement must be fully executed by all parties thereto prior to a discharge from any industrial user in the outside jurisdiction.

**5.6 EMERGENCY ACTION.** Atlanta, acting as an agent of College Park, after providing notice to College Park, may take emergency action to stop or prevent any discharge into the Sewer System for conveyance and treatment through the Sewer System that is generated in, or transported through College Park, when, in the reasonable opinion of Atlanta, such discharge 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 the Sewer System. Atlanta agrees to provide such notice as is practicable to the sewer user and to College Park 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 until after the emergency powers of the jurisdiction providing wastewater treatment have been exercised.

**5.7 COLLEGE PARK SEWER USE AND PRETREATMENT ORDINANCE.** In the event that College Park is authorized by the State of Georgia to permit and enforce the sewer use and pretreatment ordinance, according to applicable laws and regulations, College Park shall provide Atlanta notice of such authorization and the provisions of this Section 5 shall be amended to apply to College Park in substantially similar form.

## SECTION 6

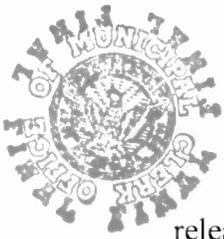
### PROVISIONS OF GENERAL APPLICATION

**6.1 RIGHTS CONDITIONED ON PERFORMANCE.** The right of College Park to the continued use of the Sewer System is conditioned upon good faith and substantial compliance by College Park of all of its obligations under this Agreement.

**6.2 RIGHT TO SEEK SPECIFIC PERFORMANCE.** The Parties agree that the damages resulting from a breach of the contractual rights to use the Sewer System granted by this Agreement may not be susceptible to monetary calculation, and that damages recoverable at law may not be adequate compensation for non-performance, by either party, of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy for the non-performance of the terms and conditions of this Agreement, and the provisions of Article 6.16 have been complied with, either Party shall be entitled to specific performance or any other available equitable remedies.

**6.3 SEVERABILITY.** It is understood and agreed by and between College Park and Atlanta that if any condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other condition or provision herein contained; provided, however, that the invalidity of any such condition or provision does not materially prejudice either Atlanta or College Park in its respective rights and obligations contained in the remaining valid conditions or provisions of this Agreement.

**6.4 WAIVER.** No failure of any Party hereto to exercise any right or power granted under this Agreement or to insist upon strict compliance by the other Parties of the terms and conditions of this Agreement, shall constitute a waiver of any Party's right to demand exact and strict compliance by the other Parties hereto with the terms and conditions of the Agreement. Nor shall any custom or practice that may evolve between the Parties in the administration of the terms hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Parties in strict accordance with the terms hereof.



**6.5 WAIVER OF DAMAGE.** College Park hereby expressly waives and releases Atlanta from any and all claims for damages arising or resulting from failure or interruption of sewer services provided that such failure or interruption of sewer services were not occasioned by Atlanta's negligent or intentional acts.

**6.6 DAMAGE OR DESTRUCTION OF FACILITIES.** In the event of damage or destruction by fire or other casualty, or otherwise of the facilities of the Sewer System, Atlanta shall, with all reasonable diligence and dispatch, repair or rebuild said premises 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 upon between Atlanta and College Park.

**6.7 INCORPORATION OF EXHIBITS.** All exhibits referred to herein, provisions of other agreements or documents, appendices, exhibits or schedules which may, from time to time, be referred to herein or in any duly executed agreement hereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Agreement as fully as if set forth herein; provided, however, if any conflict exists between any such agreements or documents, appendices, exhibits or schedules and any provision of this Agreement, the provision of this Agreement shall prevail.

**6.8 RIGHTS OF NON-PARTIES.** No Party not a signatory to this Agreement shall be a beneficiary of the rights and obligations hereunder.

**6.9 PARTIES' RELATIONSHIP.** It is not the intention of the Parties to create, nor shall this Agreement be construed as creating, a partnership, joint venture, agency relationship, or association, or to render the Parties liable as partners, co-ventures, or principals. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries or to have established a confidential relationship, but rather shall be free to act on an arms-length basis in accordance with their own respective self-interests, subject, however, to the obligation of the Parties to act in good faith in their dealings with each other with respect to activities hereunder.

**6.10 TIME OF ESSENCE.** Time is expressed to be of the essence of this Agreement.

**6.11 HEADINGS.** The headings contained herein, including the Table of Contents are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

**6.12 NOTICE.** All notices, consents, payments, and approvals to be given hereunder shall be in writing and signed by a duly authorized representative of the party by or on whose behalf they are given and shall be deemed given when deposited in the United States mail by addressee, postage prepaid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party).



A. City of Atlanta  
Department of Watershed Management  
Atlanta City Hall  
Atlanta, Georgia 30303  
Attention: Commissioner of Department of Watershed Management  
With copy to City of Atlanta City Attorney

B. City of College Park  
Department of Public Works  
2433 Harvard Avenue  
College Park, Georgia 30337  
Attention: Director of Public Works

With copy to City of College Park City Manager and to City of College Park City Attorney.

**6.13 TERM OF AGREEMENT.** This Agreement shall be in effect on the Effective Date of the Agreement and shall continue in effect for a period of fifteen (15) years. Thereafter, it may be renewed by the Parties for an additional seven (7) five (5) year terms, collectively not to exceed fifty (50) years from the Effective Date. If any Party shall intend to not renew this agreement, such Party shall provide the other Party twelve (12) months written notice of its intent not to renew this Agreement. Each Party shall obtain all appropriate authorizations from its respective governing bodies to renew the Agreement, if renewed. Failure of one Party to provide timely notice to the other Party of its intent not to renew in accordance with this Section shall obligate that Party to obtain authorization for renewal the Agreement for the next succeeding renewal term.

**6.13.1 RETURN OF UNDEPRECIATED CAPITAL.** Upon the termination or expiration of this Agreement, College Park shall be paid the value of the un-depreciated portion of the Sewer System facility attributed to them for which College Park contributed to Capital Improvements prior to and during the term of this Agreement. The amounts contributed by College Park, related in-service dates, useful lives and yearly depreciation of Capital Improvements subject to this provision attributed to College Park as of the date of this Agreement are listed in **Exhibit "D"** as attached hereto and shall be updated annually by Atlanta.

#### **6.14 PERIODIC REVIEWS**

**6.14.1 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 Sewer System meets all applicable state and federal requirements, as they may be promulgated or amended from time to time. 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 authorizing such amendments as are agreed upon by both Parties. No such amendments to this Agreement shall become effective unless it shall be reduced to writing, authorized by the respective Governing Authority of both Parties, and

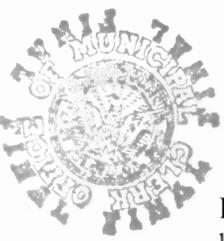


**6.20 DEFAULT.** Failure of College Park to pay Atlanta any of the payments required under this Agreement when due, or failure of either Party to comply with any covenant, term, or obligation of this Agreement shall constitute a material default on the part of such Party. In any such event, the non-defaulting Party may, after complying with the provisions of Section 6.16 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.

**6.21 PERSONAL LIABILITY.** No elected official, director, officer or employee of either Party shall be charged personally or held contractually liable by or to 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.

**6.22 ASSIGNMENT.** This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties; provided, however, that this Agreement shall not be transferred or assigned by any party hereto except with the consent in writing of the other party which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a Party of any obligation hereunder.

[SIGNATURES ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the duly authorized officials of College Park and Atlanta have caused the name of College Park and the name of Atlanta and the seals of said political subdivisions and the signatures of their duly authorized executive officers to be affixed hereto below.

Attest:

**COLLEGE PARK, GEORGIA**

\_\_\_\_\_  
City Clerk (SEAL)

\_\_\_\_\_  
Jack P. Longino, Mayor

Approved as to form:

-----  
Director of Public Works

\_\_\_\_\_  
City Attorney

Attest:

**CITY OF ATLANTA, GEORGIA**

\_\_\_\_\_  
City Clerk (SEAL)

\_\_\_\_\_  
Kasim Reed, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

Recommended by:

\_\_\_\_\_  
Commissioner,  
Department of Watershed Management



## EXHIBIT A

### SEWER SYSTEM FACILITIES, FLOW METER LOCATIONS AND POINTS OF ENTRY

1. South River Waste Water Reclamation Center (WRC), 2640 Jonesboro Rd, SE- Design capacity, 48 MGD Average Daily Flow; Agreed to Average Daily Flow of 49 MGD; with primary and secondary treatment facilities, solids handling, TWAS Centrifuge and dewatering facilities.

Major transmission and effluent discharge components of WRC include:

- South River WRC Effluent Pumping Station
- South River WRC Effluent Force Main
- South River WRC Effluent Gravity Main
- Three Rivers Effluent Conveyance Tunnel and
- Three Rivers Effluent Conveyance Outfall Sewer

2. Wastewater Collection and Transmission Facilities.

- Flint River Pump Station, 860 Lake Mirror Rd, Forrest Park, GA- Design Capacity, 18 MGD;
- College Park Outfall;
- Hapeville Outfall
- Flint River Force Main
- Flint River Gravity Sewer

#### Flow Metering Stations

1. Harvard Metering Station- located at the beginning of College Park Sewer Outfall near I-285, which is used to measure and monitor flow into the College Park Outfall.
2. Elm Metering Station- used to measure and monitor flow into the Elm Outfall.
3. Mercer Metering Station- used to measure flow into the Mercer Outfall.



4. Southeast Lift Station (owned by the City of College Park)- located at the beginning of the City of Atlanta Department of Aviation Force Main connection to the Flint River Pump Station.

Points of Entry

1. The points of entry for wastewater discharge quantities from the College Park Sewer to the Sewer System shall be at the beginning of the City of Atlanta Department of Aviation Force Main connection to the Flint River Effluent Pump Station, and
2. At the points where the meters are installed at the Harvard, Elm and Mercer metering stations.



**EXHIBIT B**

**CAPITAL PROJECTS INVOICED AND INITIATED BY ATLANTA PRIOR TO  
SETTLEMENT AGREEMENT AND RELEASE DATED**

<b>WBS No.</b>	<b>Facility</b>	<b>Description</b>	<b>Estimated Project Cost</b>
02.14.900	South River WRC	Clarifier Upgrades	\$3,484,230
02.14.900	South River WRC	Clarifier Upgrades Design	\$132,900
02.14.400	South River WRC	A&E Services WRC Upgrades	\$215,000
02.18.915	South River WRC	Effluent Main Re-aeration (Cont)	\$1,350,000
02.18.915	South River WRC	Effluent Main Re-aeration (Design)	\$374,900
02.18.904	South River WRC	Upgrade Solids Handling (Design)	\$84,989
02.18.904	South River WRC	Upgrade Solids Handling (Cont)	\$4,840,000
02.18.904	South River WRC	Force Main Corrosion Testing	\$302,575
07.79.001	South River WRC	Biosolids Management (Design)	\$137,587
02.18.301	South River WRC	Dewatering Centrifuge	\$1,229,298
07.79.001	South River WRC	Biosolids Management	\$306,111
07.79.001	South River WRC	Biosolids Management	\$670,280
07.79.001	South River WRC	Biosolids Management	\$170,865



07.79.001	South River WRC	Biosolids Management	\$107,331
07.79.001	South River WRC	Biosolids Management	\$219,754
09.02.901	Flint River LS	Flint River Transmission Main	\$825,501
09.02.901	Flint River LS	Flint River Transmission Main	\$1,938,750
09.02.901	Flint River LS	Flint River Transmission Main	\$523,522
09.02.901	Flint River LS	Flint River Force Main (Cont)	\$8,969,690
09.02.901	Flint River LS	Flint River Force Main (Cont)	\$815,735
09.02.901	Flint River LS	Flint River Force Main (Design)	\$627,474
09.02.902	Flint River LS	Flint River Transmission Main II	\$315,304
09.02.904	Flint River LS	Corrosion Testing	\$73,636
09.02.904	Flint River LS	Corrosion Testing	\$121,514
09.02.904	Flint River LS	Corrosion Testing	\$39,555
03.05.002	Flint River LS	Pump Station Improvements	\$348,701
09.02.904	Flint River LS	Corrosion Testing	\$39,555
03.05.002	Flint River LS	Pump Station Improvements	\$348,701



**EXHIBIT C**

**CAPITAL PROJECTS PLANNED TO BE INITIATED AFTER**

**THE EFFECTIVE DATE OF AGREEMENT**

**(SUBJECT TO PAYMENT PER SECTION 2.2 OF AGREEMENT)**

Project	2013	2014	2015	2016	2018	2019	2020
Flint River PS			\$875,000	\$14,932,000			
Primary Clarifiers	\$1,442,000	\$12,612,000	\$9,459,000				
Various Projects - Group 1	\$340,000	\$4,950,000	\$248,000				
Digester Cover				\$781,000	\$12,459,000		
UV System					\$1,608,000	\$15,804,000	\$9,747,000
Various Projects - Group II						\$1,147,000	\$18,251,000
	<u>\$1,782,000</u>	<u>\$17,562,000</u>	<u>\$10,582,000</u>	<u>\$15,713,000</u>	<u>\$14,067,000</u>	<u>\$16,951,000</u>	<u>\$27,998,000</u>



**EXHIBIT D**

**VALUE OF UNDEPRECIATED CAPITAL IMPROVEMENTS FOR COLLEGE  
PARK AS OF EFFECTIVE DATE OF THIS AGREEMENT**

	<b>College Park Paid Amounts</b>	<b>Service Date</b>	<b>Useful Life Years</b>	<b>Yearly Depreciation</b>
South River WRC Phosphorous Reduction	\$3,633,672	8/1/2001	50	\$72,673
Task 5	\$728,705	12/1/1985	50	\$14,574
Task 7A	\$41,195	12/1/1985	50	\$824
Task 7B	\$621,734	12/1/1985	50	\$12,435
Task 7C	\$136,668	12/1/1985	50	\$2,733
Task 8	\$357,338	12/1/1985	50	\$7,147
Task 8A	\$45,271	12/1/1985	50	\$905
Flint River P.S. Phosphorous Reduction	\$146,998	8/1/2001	50	\$2,940

RCS# 3077  
10/21/13  
2:24 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I; ALL ITEMS  
EXCEPT 13-O-1290 AND 13-O-1302  
ADOPT

YEAS: 11  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 3  
EXCUSED: 0  
ABSENT 2

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

CONSENT I

+

		10-21-13
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 13-O-1313	33. 13-R-3647	
2. 13-O-1195	34. 13-R-3648	
3. 13-O-1291	35. 13-R-3649	
4. 13-O-1294	36. 13-R-3650	
5. 13-O-1296	37. 13-R-3651	
6. 13-O-1300	38. 13-R-3652	
7. 13-O-1303	39. 13-R-3653	
8. 13-O-1307	40. 13-R-3654	
9. 13-O-1308	41. 13-R-3655	
10. 13-O-1312	42. 13-R-3656	
11. 13-O-1314	43. 13-R-3657	
12. 13-R-3633	44. 13-R-3658	
13. 13-R-3637	45. 13-R-3659	
14. 13-R-3638	46. 13-R-3660	
15. 13-R-3664	47. 13-R-3661	
16. 13-R-3665		
17. 13-R-3666		
18. 13-R-3548		
19. 13-R-3667		
20. 13-R-3668		
21. 13-R-3642		
22. 13-R-3634		
23. 13-R-3662		
24. 13-R-3663		
25. 13-R-3639		
26. 13-R-3640		
27. 13-R-3641		
28. 13-R-3670		
29. 13-R-3643		
30. 13-R-3644		
31. 13-R-3645		
32. 13-R-3646		