

**INTERGOVERNMENTAL AGREEMENT
FOR THE EXPANSION OF SEWER INFRASTRUCTURE NECESSITATED BY THE
REDEVELOPMENT OF TRINITY TRIANGLE
between
DEKALB COUNTY, GEORGIA AND
DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF DECATUR,
GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (the “County”) and the Downtown Development Authority of the City of Decatur, Georgia (the “DDA”).

WHEREAS, the County provides water treatment and distribution and wastewater collection and treatment services to residents of the City of Decatur (the “City”); and

WHEREAS, the DDA is a body corporate and politic of the State of Georgia pursuant to the provisions of the Downtown Development Authorities Law (O.C.G.A. Section 36-42-1 et seq.), as amended (the “Act”); and the Authority is now existing and operating and its members have been duly appointed and entered into their duties; and

WHEREAS, the DDA is authorized under the Act to make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the DDA or to further the public purpose for which the DDA is created, including for the purpose of planning, organizing, and financing projects that will revitalize and redevelop the City’s commercial business districts; and

WHEREAS, the County and the DDA desire to work cooperatively to effectuate water and sewer infrastructure facilities and equipment improvement projects by the County to encourage economic development that will benefit both the County and the City; and

WHEREAS, the County and the DDA desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote economic development and the overall interests of the citizens of both jurisdictions; and

WHEREAS, Decatur Trinity MF-1, L.P. (the “Owner”) has proposed the redevelopment of properties located within the City and known as Trinity Triangle, a development of substantial size that, when completed, will increase the tax bases of both the City and the County and will increase water and sewer revenues collected by the County; and

WHEREAS, the County has determined that the proposed redevelopment of Trinity Triangle will require replacement of a portion of the existing public sanitary sewer infrastructure facilities and equipment serving the Trinity Triangle property and numerous other properties in order to increase the load capacity thereof; and

WHEREAS, the Owner has agreed, at its own expense and in compliance with all applicable statutes, regulations, ordinances, and laws, to perform certain work along the full length of East Maple Street, and a small area along North McDonough Street, specifically, removal of approximately 475 Linear Feet (LF) of existing 8” ductile iron pipe, and replacing it with 10” High-density Polyethylene (HDPE) by a method commonly known as pipe bursting. (the “Sewer Infrastructure Expansion”); and

WHEREAS, the County and the DDA desire to enter into an Intergovernmental Agreement to provide for the sharing of costs associated with the Sewer Infrastructure Expansion in order to accomplish their desired mutual goals; and

WHEREAS, the County and the DDA recognize that such sharing of costs shall extend to only those portions of the Sewer Infrastructure Expansion that replace and/or expand a portion of the existing public sewer infrastructure located within the right of way or any dedicated easement areas and shall not apply to any improvements located wholly or partly on the Trinity Triangle property or to any other private portion of the sewer infrastructure.

NOW THEREFORE, in consideration of the following mutual obligations, the County and the DDA agree as follows:

Section 1. The County, through its Department of Watershed Management, shall contribute to the funding of the Sewer Infrastructure Expansion (a) fifty-percent (50%) of the Cost of Expansion (defined below) in an amount not to exceed \$150,000, and (b) the amount of \$19,619.24, which represents the amount paid by or on behalf of the Owner with respect to a water lien on the Trinity Triangle Project as follows:

- 1.1 The total amount specified in Section 1 shall be known as the “County Contribution”.
- 1.2 The “Cost of Expansion” is defined to mean all costs and expenses incurred by the Owner with respect to the Sewer Infrastructure Expansion including without limitation construction and engineering costs.
- 1.3 At the time the Sewer Infrastructure Expansion is completed and approved by the DeKalb Department of Watershed Management (the “Date of Completion”), the DDA shall provide notice in writing to the County of the Date of Completion, the total Cost of Expansion, and the amount of the County Contribution.
- 1.4 Within ten (10) business days of receiving the notice specified in Section 1.2, the County shall pay to the DDA the total value of the Cost of Expansion.

Section 2. The DDA shall pay to the County the total Cost of Expansion less the County Contribution (the “DDA Contribution”) as follows:

- 2.1 The DDA shall pay the DDA Contribution in ten (10) equal installments over a ten (10) year period, with each equal annual payment being due on the

anniversary date of the Date of Completion, with the first payment being due on the one (1) year anniversary of the Date of Completion. In the event the anniversary date of the Date of Completion occurs on a Saturday, Sunday, or County holiday, such payment shall be made on the next day that is not a Saturday, Sunday, or County holiday.

- 2.2 In the event any payment specified in Section 2.1 is more than thirty (30) days past due, the County may charge the DDA interest at a rate of one-percent (1%) per month as to the outstanding amount until the past due payment is paid to the County in full.
- 2.3 The DDA may, at its election, pre-pay the DDA Contribution at any time without penalty. In the event the DDA makes payment under this Agreement to the County of an amount equal to 88.84% of the DDA Contribution on or before the second anniversary of the Date of Completion, such payment shall constitute full satisfaction of the payment obligation specified in Section 2 of this Agreement.

Section 3. The County and the DDA agree that this Agreement shall terminate upon the earlier of: (i) the date on which an amount equal to the DDA Contribution and any required interest payments has been paid to the County in full under this Agreement, or (ii) the date on which an amount equal to 88.84% of the DDA Contribution is paid to the County in accordance with Section 2.3 of this Agreement.

Section 4. All notices required under this Agreement shall be given by certified first class U.S. Mail, return receipt requested. The County and the DDA agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the DDA to the County Executive Assistant or by the County to the DDA via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Executive Assistant
 Manual Maloof Building
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030
 404-371-4751 (facsimile)

With a copy to: County Attorney
 1300 Commerce Drive, 5th Floor
 Decatur, Georgia 30030

If to the DDA: Lyn Menne
 Executive Director
 P.O. Box 220
 Decatur, Georgia 30030

With a copy to: R. Kyle Williams, Esq.
Williams Teusink, LLC
The High House
309 Sycamore Street
Decatur, Georgia 30030

Section 5. This Agreement may be extended at any time by mutual consent of both parties so long as such extension is approved by official action of the DDA and official action of the County governing authority.

Section 6. Neither party shall assign any of the obligations or benefits of this Agreement.

Section 7. The County and the DDA acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation, oral or written, not incorporated in this Agreement shall be binding upon the County or the DDA. All parties must sign any amendments to the Agreement.

Section 8. The County and the DDA each warrant and represent that it has full and complete authority to enter into this Agreement, and each person executing this Agreement on behalf of the County and the DDA has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such person(s). Notwithstanding the foregoing, neither the County nor the DDA shall be bound under this Agreement until such time as both parties have fully executed this Agreement and this Agreement has been duly approved and authorized by all necessary and appropriate official action on the part of the County Board of Commissioners and by the governing body of the DDA.

Section 9. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

Section 10. If a court of competent jurisdiction renders any provision of this Agreement (or portion thereof) to be invalid or otherwise unenforceable, that provision or portion thereof shall be severed and the remainder of this Agreement shall continue in full force and effect as if the invalid provision or portion thereof was not part of this Agreement. No action taken pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and should not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

Section 11. This Agreement shall inure to the benefit of, and be binding upon, the County and the DDA and their respective successors. This Agreement does not and is not intended to confer

any rights or remedies upon any persons other than the County, the DDA, and their respective successors.

Section 12. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the County and the DDA have executed this Agreement through their duly authorized officers.

This ____ day of _____, 2015.

DEKALB COUNTY, GEORGIA

LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Department Director

County Attorney

DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF DECATUR

Chris Scaironne, Chair

John Drake, Vice Chair

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Lyn Menne, Executive Director

R. Kyle Williams, Esq.