WATER FRANCHISE AGREEMENT

WHEREAS, the City of Peachtree City, a municipal corporation of the State of Georgia (hereinafter the “City”) owns certain property, easements and right of ways within the corporate limits of Peachtree City, Georgia, including but not limited to Lake Peachtree (hereinafter the “Lake”); and

WHEREAS, through a series of intergovernmental agreements beginning in 1966, and amendments thereto, between the City (or Georgia Utilities Company) and Fayette County, Georgia (hereinafter the “County”), the City has granted to the County water withdrawal rights from the Lake which has enabled the County’s provision of drinking water from the Lake for the County’s water system; and

WHEREAS, through such agreements, the City granted the County the exclusive right, privilege and franchise to enter the corporate limits of the City and therein construct and thereafter operate, maintain, repair, replace, add to, extend and improve certain components to the County’s water system; and

WHEREAS, in accordance with said previous agreements, the County is presently dredging certain areas of the Lake bed to remove siltation; and

WHEREAS, the City and the County have also entered into an agreement entitled the “Loghouse Well Agreement” as of June 10, 1993 to expire on October 11, 2034 whereby certain rights and responsibilities were set out between the City and the County pertaining to the treatment of water from the Loghouse Well; and

WHEREAS, the City and County (hereinafter collectively the “Parties” or individually a “Party”) wish to enter into a new agreement which replaces and supersedes all of the following previous agreements: 04/01/1966, 05/23/1966, 04/21/1981, 09/17/1984, 10/18/1984, 03/29/1985 and extends their partnership through the end of the calendar year 2035, and terminates that agreement known as and referred to as the “Loghouse Well Agreement” entered into as of June 10, 1993;

WHEREAS, the entering into of this intergovernmental agreement (hereinafter the “Agreement”) is authorized under the Constitution and laws of the State of Georgia, particularly Article IX, Section II, Paragraph III and Article IX, Section III, Paragraph I of the Georgia Constitution.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, the City, acting by and through its Mayor and Council, and the County, acting by and through its Board of Commissioners, do hereby agree to the following terms and conditions.
Section 1. Term of Agreement

1.1 The preamble is incorporated here by reference as if fully restated.

1.2 This Agreement shall become binding and effective upon the date of the last signature hereof, and the term of this Agreement shall be that period of time between said date and 11:59 PM of December 31, 2035.

1.3 The agreement entitled the “Loghouse Well Agreement” which was entered into by the City and the County as of June 10, 1993 with an expiration date of October 11, 2034 is terminated completely as of the effective date of this Agreement. The County shall provide water to the City at the commercial wholesale water rate in exchange for terminating the "Loghouse Well Agreement." The City will assume the maintenance and operation of the well, once the County has brought the well up to full operational condition.

Section 2. Water Withdrawal from the Lake

2.1 For the purpose of providing water to the citizens, businesses and governmental entities in the City and the County, the City grants to the County the right to withdraw water from the Lake at or within five hundred feet (500’) of the dam of the Lake and in the amount not to exceed four million, five hundred thousand gallons per twenty-four hour day.

2.2 In exchange for the water withdrawal rights granted in this Agreement, the County shall operate and maintain in good working order (including repair and replace) its water withdrawal system and ensure that in the exercise of such rights the County does not adversely impact the soundness of the Lake dam and spillway. Furthermore, the County agrees to operate the dam and spillway at no cost to the City and indemnify the City for any damage to the dam and spillway resulting from the County’s negligent operation of same. The County’s operation and maintenance of the dam and spillway will occur consistent with the County’s standard operations and maintenance procedures which are required to be employed for a drinking water reservoir. All employees of the County who perform the operations and maintenance on the dam and spillway will remain employees of the County. Maintenance of the dam may include removal of trees from the dam. Should it be determined by the appropriate state agency that removal of the trees from the dam is consistent with best practices for dam maintenance, the County shall take all necessary action to cause the trees on the dam to be removed. If, however, the appropriate state agency determines that removal of the trees on the dam is not consistent with best practices for dam maintenance, and the City still desires the trees to be removed, the City and County will agree on the appropriate terms and conditions under which such removal shall occur. To the extent there is any seepage of water through the dam, and such seepage is the result of a lack of maintenance or improper maintenance, the County will take all necessary action to cause the seepage to cease. The City agrees to exercise its best efforts to take all reasonable measures which would result in a reduction of silt being introduced into the Lake.
2.3 Except for dredging, maintenance, repairs, or when the City replaces the spillway as provided under paragraph 2.8 of this Agreement, the County and the City agree to exercise their best efforts to maintain the water in the Lake at a minimum pool level of 784.4 feet Mean Seal Level NAVD88 ("Minimum Pool Level").

2.4 The City acknowledges that the County has a permit to withdraw water from the Lake and a permit to withdraw from Lake Kedron through the Lake, and it agrees to cooperate with the County in maintaining said permits which are attached hereto and incorporated herein as Exhibit "A". The County covenants and agrees to provide the City with advance notice of its intention to no longer renew or transfer said permit(s) and to cooperate with the City if the City desires to secure water withdrawal rights. To the extent that it is under the County's reasonable control, the County covenants and agrees to maintain said permits for the life of this Agreement unless it transfers said permits to the City or unless otherwise ordered by the State.

2.5 The County acknowledges that it does not have nor does this Agreement convey any general right of public or private access to or use of the Lake except that which is needed by the County to withdraw water and perform its obligations under this Agreement.

2.6 Under previous agreements, the County was obligated to dredge the siltation and remove vegetation in certain areas of the Lake. This dredging obligation occurred when the City and the County jointly inspected and tested the condition of the Lake to determine the amount of dredging required, if any, on at least an eight to ten (8-10) year cycle. The Parties desire to transition to new methodology in order to determine when future dredging should occur. The Parties agree that a bathymetric survey will be performed to determine the topography of the entire Lake bottom, accurate to within two tenths of one foot (0.2'). This bathymetric survey shall occur on or before January 15, 2016 and shall serve as the Baseline Survey for the following joint dredging event ("Baseline Survey"). The cost of the Baseline Survey shall be borne by the County. Thereafter, a bathymetric survey shall be performed within 90 days after January 15, 2030 ("2030 Survey"). The 2030 Survey shall be done by the City and the cost of same shall be divided equally between the City and County, fifty percent (50%) each. A Registered Land Surveyor licensed to practice in the State of Georgia will prepare all bathymetric surveys required under this Agreement.

2.7 Within 12 months of the certification by the registered land surveyor of the 2030 Survey, the City shall commence dredging within Zone 1, which is depicted in Exhibit "B" attached hereto and incorporated herein as Zone 1 ("Joint Dredging"). The City and the County shall be obligated to divide the cost of the Joint Dredging equally between the City and County, fifty percent (50%) each. The County agrees to contribute to the City up to ONE MILLION AND 00/100 ($1,000,000.00) DOLLARS toward the City's portion of the cost of the Joint Dredging. (For example, if the dredging costs $3 million, then the cost of the dredging would be divided in half with $1.5 million allocated to each party. The County would then contribute its pledged $1 million to the City's $1.5 million portion of the dredging cost. Additionally, if the dredging costs
less than $2 million, then the cost of the dredging would be divided in half and the credit from the County to the City would be less than $1 million.) The parties also agree to divide equally, fifty percent (50%) each, the costs for repairs to city and county roads damaged by trucks removing dredged sediment. The City and County agree that the City will be responsible for all actions necessary up to and including the dredging. The Joint Dredging will be for the purpose of removing that amount of silt which has accumulated since the Baseline Survey, plus and additional ten (10%) of that amount (the “Dredging Total”). To the extent that the City desires to perform dredging in excess of the Dredging Total, the County will not be responsible to participate in the cost of dredging in excess of the Dredging Total. The City acknowledges that all liability for the Joint Dredging operation will be borne by the City and that County’s participation is limited only to its monetary contribution. Notwithstanding the Joint Dredging, nothing in this Agreement precludes the City from dredging any portion of the Lake at its own cost during the term of this Agreement.

2.8 In exchange for the City agreeing to accept all responsibility and liability for the dam, spillway, banks and bottom of the Lake, except where specifically stated otherwise in this Agreement, the County shall contribute monetarily to a new spillway for the Lake. Within 30 days from the City providing the County written notice that the City has entered into a construction contract to build the new spillway for the Lake, the County shall pay the City the amount of TWO MILLION AND 00/00 ($2,000,000.00) DOLLARS towards the construction of such spillway. This payment is non-refundable; provided however, that the City shall refund to the County fifty percent (50%) of said sum if the new spillway is not complete within four years from the date said payment is made.

2.9 The Parties acknowledge that circumstances in the future may dictate that the intake pump structure at the Lake should be moved from the Lake to Lake Kedron in order to more adequately supply water for the County’s water system. In the event that the County determines that such a move is in the best interest of the customers of the County’s water system, the County will bear all expense in moving the intake pump structure from the Lake to Lake Kedron. The City agrees to cooperate with the County to enable the County to move the aforesaid intake pump structure from the Lake to Lake Kedron.

**Section 3. Water Franchise**

3.1 Except as otherwise provided in this Agreement and for the purpose of providing water service to the citizens, businesses and governmental entities of the City and County, the City grants to the County the exclusive franchise rights to provide and operate its County owned and operated water system within public rights-of-way and public utility easements within the incorporated boundaries of the City; provided, however, that such grant does not include those public rights-of-way and public utility easements in those areas annexed into the City where water is being provided by some other utility at the time of annexation.
3.2 The County shall undertake to supply a reasonable amount of water service to all citizens, businesses and governmental entities of the City desirous of obtaining such water service.

3.3 The County shall have the right to construct, operate, maintain, replace, repair and extend its water lines and appurtenant structures within the public rights-of-way and public utility easements of the City.

3.4 The County shall in all cases restore all streets, highways, alleys, roads, sidewalks, cart paths, bridges, utilities, public and private facilities and places, and other things or grounds of the City disturbed by the County in the exercise of this Agreement to the condition prior to such disturbance, and shall conduct its operation, maintenance, repair, replacement, extension and additions to the system without undue obstruction of foot, bicycle, golf cart or vehicular traffic, and shall make all restorations as above required within a reasonable time.

3.5 It is expressly provided, however, that in the event the County shall hereafter be unable or unwilling, from time to time, to make additions, extensions and improvements to its water system within the present and future corporate limits of the City, then the City, if it desires to do so, may construct such additions, extensions and improvements, without violating this exclusive franchise agreement; provided, however, the City must first seek and be provided written notice from the County that it is unwilling or unable to make the additions, extensions and improvements desired by the City, or in any event after the expiration of ninety (90) days from the date the City furnishes the County with written notice of its desire for additional water facilities. The City, in constructing such additions, extensions and improvements, shall do so consistent with the County's laws, ordinances and regulations relating to such additions, extensions and improvements to the County's Water System. The City agrees that the County shall perform inspections to ensure that the construction of such additions, extensions and improvements is performed consistent with the County’s laws, ordinances and regulations. Upon completion, the additions, extensions and improvements so constructed shall be the property of the County. In the event the City should construct said additions, extensions and improvements after receiving said notice from the County or after allowing for a timely response, the County shall furnish water service to the properties serviced by said additions and extensions. If the County provides notice that it will construct such additions and extensions needed to supply water service to such areas, then it must do so within a reasonable period of time.

3.6 The water rates imposed by the County shall be uniform within each class of customers regardless of whether the customers are located within or without the incorporated area of the City.
Section 4. Miscellaneous Provisions

4.1 The County covenants and agrees that it will indemnify the City and hold it harmless from any loss, liability, claim or cause of action of any kind resulting from the County’s (or its employees, contractors or agents) exercise of its rights, performance or failure to perform its obligations under this Agreement. If, after being provided written notice by the City of not less than sixty (60) days prior to the City taking action, the County fails to perform its obligations under this Agreement, the City may perform, but shall not be obligated to perform, such obligations. If the City so performs, the County shall reimburse the City for all reasonable costs and expenses incurred by the City. The City covenants and agrees that it will indemnify the County and hold it harmless from any loss, liability, claim or cause of action of any kind resulting from the City’s (or its employees, contractors or agents) exercise of its rights, performance or failure to perform its obligations under this Agreement. If, after being provided written notice by the County of not less than sixty (60) days prior to the County taking action, the City fails to perform its obligations under this Agreement, the County may perform, but shall not be obligated to perform, such obligations. If the County so performs, the City shall reimburse the County for all reasonable costs and expenses incurred by the County.

4.2 Unless otherwise expressly agreed to by the Parties, the County shall pay for its performance of any right or obligation under this Agreement solely and exclusively from the revenues derived from its water system or from the proceeds received from the issuance of revenue bonds against its water system.

4.3 The Parties acknowledge and agree that each Party may in the future issue revenue bonds based upon the terms of this Agreement and that in so doing the holders of such revenue bonds hereafter issued by the County or City or both shall have an interest in the Parties’ respective performance hereunder. The Parties covenant that this Agreement cannot be terminated, modified or amended in any way which would adversely affect the rights of any such bond holders without their express consent.

4.4 The Parties recognize that either party may sell revenue bonds to finance undertakings consistent with the exercise of the rights and obligations afforded under this Agreement. The County covenants to adopt, maintain and revise rates and collect fees and charges to the extent necessary to produce funds sufficient at all times to operate and maintain its water system on a sound basis, to pay the principal of and interest on any revenue bonds hereafter issued by County as same mature and to create and maintain an adequate reserve for that purpose, as well as to create and maintain a reserve for maintenance, extensions and improvements to the system. It is further recognized that the County may hereafter issue from time to time refunding bonds to refund any and all such bonds and the aforesaid covenant, relative to the adoption, maintenance and revisions of rates and the collection of fees and charges for water service and facilities would likewise be applicable to any such refunding bonds or obligations. The County, however, by the acceptance of this Agreement, covenants to operate and maintain, at all times, said system in a
business-like manner and that it will undertake to maintain rates and collect fees and charges on a reasonable and equitable basis and in keeping with its obligations under any resolution authorizing the issuance of any of its obligations, and that all such rates shall, as far as practicable, be uniform in application consistent with the cost involved.

4.5 “Notwithstanding paragraphs 4.3 and 4.4,” within 365 days prior to the date of the natural expiration of this Agreement or after its prior termination by either Party, if the County has the right to sell that portion of its water system within the limits of the City, excluding the Crosstown Water Treatment Plant, the Distribution Plant and all other components with the County’s water system within the City which distributes County water to areas outside the City limits, the City, upon written notice to the County therefor, shall have the right and option to purchase from County the water system, including pipes, lines, facilities and interest in real property within the existing corporate limits of the City, except for the aforementioned limitations. It is expressly provided, however, that the purchase price paid by the City to County shall be at least sufficient to comply with the provisions of any resolution adopted by County authorizing the issuance of any revenue bonds of the County which are then outstanding.

4.6 Any transferee, assignee or successor of County or City shall hold and exercise such rights, powers, privileges, liabilities, duties and obligations granted under this Agreement, subject to all the terms and conditions of this Agreement.

4.7 If by reason of force majeure either Party hereto is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if such Party gives notice and full particulars of such force majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. Any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, orders of any kind of the Government of the United States, of the State of Georgia, or any civil or military authority or courts thereof, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines, partial or entire failure of water supply, and inability on the part of County to supply water services hereunder, and on account of any other causes not reasonably within the control of the Party claiming such inability.

4.8 This Agreement shall be construed under the laws of the State of Georgia. Should any phrase, clause, sentence or paragraph of this Agreement be held invalid or unconstitutional by any court of competent jurisdiction of this State or of the United States in any manner or respect whatsoever, it shall not be construed so as to effect any or all of the remaining terms and provisions, all of which shall remain in full force and effect.
4.9 If any disagreement shall arise with reference to any of the terms or conditions of this Agreement, or with reference to any matter connected with same, such disagreement or dispute shall be submitted to and decided by a panel of three arbitrators. The County shall appoint one arbitrator, and the City shall appoint one arbitrator. The two appointed arbitrators shall select a third arbitrator. If the two chosen arbitrators cannot agree on a third arbitrator, then such third arbitrator shall be appointed by the chief judge of the Superior Court of Fayette County after petition filed by either of the Parties. A majority of the three person panel is required to render a final decision, and such decision shall be binding on the Parties hereto, but may be appealed to the Superior Court of Fayette County.

4.10 Notices required in this Agreement shall be sent by certified mail return receipt requested or statutory overnight delivery to the following persons and addresses for each respective Party:

**County:** Fayette County, c/o Chairman, 140 Stonewall Ave., West, Suite 100, Fayetteville, Ga. 30214.

**City:** City of Peachtree City, c/o Mayor, 151 Willowbend Road, Peachtree City, Ga 30269.

4.11 Each of the signatories to this Agreement warrant and represent that he or she has the legal authority granted by his or her respective governing body to execute this Agreement and so bind his or her respective government to this Agreement.

4.12 The Parties agree that this Agreement shall constitute a full accord and satisfaction of all disputed claims which have arisen under the existing Agreements between the Parties, as amended, including any claims which have been asserted or could have been asserted as of the date of this Agreement, and that entering into this Agreement is not to be construed as an admission of liability upon the part of either Party.

**City of Peachtree City**

[Signature]

Vanessa Fleisch, Mayor

Date: 11/5/15

Attest:

[Signature]

Betsy Tyler, City Clerk
Fayette County

_________________________________________  Date: __________________
Charles W. Oddo, Chairman

Attest:

_________________________________________
Floyd L. Jones, County Clerk