

**TERMINATION OF PRIVATE AGREEMENT  
FOR POTABLE WATER**

THIS TERMINATION OF THE PRIVATE AGREEMENT FOR POTABLE WATER (“Termination Agreement”), by and between FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia acting by and through its Board of Commissioners (“FULTON COUNTY”), and THE CITY OF JOHNS CREEK, a municipal corporation of the State of Georgia (“USER”), with FULTON COUNTY and THE CITY OF JOHNS CREEK hereinafter collectively referred to as the “Parties,” is effective as of this 31st day of May, 2016 (the “Effective Date”).

**W I T N E S S E T H:**

**WHEREAS**, USER entered into a Reuse Agreement with EFS Cauley Creek, LLC (“Cauley Creek”) dated June 18, 2002 (“Reuse Agreement”) to supply USER with reclaimed water for a period of five (5) years, which included the option for USER to unilaterally renew the agreement for an additional four (4) year period thereafter; and

**WHEREAS**, on December 19, 2012, USER and FULTON COUNTY entered into an Agreement for Potable Water (“Agreement”), a copy of which is attached hereto as Exhibit “A”, regarding the receipt of potable water in lieu of reuse water at rates equivalent to those charged for reuse water, pursuant to USER’s Agreement For Reuse Water with Cauley Creek Water Reclamation, LLC, to which FULTON COUNTY was not a party; and

**WHEREAS**, the Environmental Protection Division (“EPD”) has indicated that the rates established pursuant to the Agreement do not comply with the water conservation pricing structure and uniformity requirements set forth in the Metropolitan North Georgia Water Planning District’s Water Supply and Water Conservation Management Plan, dated May 2009 (“District Plan”); and

**WHEREAS**, pursuant to O.C.G.A. 12-5-584, FULTON COUNTY is required to implement the provisions of the District Plan which apply to the County; and

**WHEREAS**, as a result of the foregoing noncompliance, FULTON COUNTY is required to charge USER the established irrigation rate, effective May 31, 2016; and

**WHEREAS**, considering the necessary revisions to the Agreement and rates, the Parties desire to terminate the Agreement in all particulars, save for the indemnification and hold harmless obligations set forth in paragraphs 9 and 10 thereof, which shall survive termination; and

**WHEREAS**, FULTON COUNTY intends to continue providing, and USER intends to accept, potable water for irrigation at the established irrigation rate via the former reuse water lines until a long term solution for reuse water becomes available.

**NOW THEREFORE**, in resolution of any claims or potential claims between the Parties arising under the Reuse Agreement and/or the Agreement, in consideration of the mutual promises of the Parties and the mutual benefits flowing from each Party to the other, and other good and valuable consideration exchanged, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The recitals set forth above are true and correct and are intended to be a material part of this Termination Agreement. The recitals are hereby incorporated by reference into this Termination Agreement.

2. The Parties agree that the December 19, 2012, Agreement for Potable Water is hereby terminated as of the Effective Date of this Termination Agreement. However, USER agrees that its indemnification and hold harmless obligations set forth in Paragraphs 9 and 10 of the

Agreement shall survive termination for all claims, known and unknown, which pre-date the Effective Date of this Termination Agreement.

3. FULTON COUNTY shall use commercially reasonable efforts to continue delivering potable water or reuse water for irrigation to USER's property under the terms and conditions set forth in this Termination Agreement; provided, however, that FULTON COUNTY is not required to provide any guaranteed minimum daily quantity of potable water or reuse water to USER. To the extent possible, FULTON COUNTY shall notify USER as soon as practicable in the event that FULTON COUNTY becomes aware of a failure of, or disruption in service, or if potable water or reuse water is or will not otherwise be available for distribution through the reuse water lines, and shall work to restore service as promptly as possible. FULTON COUNTY shall not be liable to USER for any losses or damages resulting from the failure or inability of FULTON COUNTY to deliver potable water or reuse water for irrigation to USER's property for any period of time, and nothing in this Termination Agreement is intended to create any third-party beneficiary rights or obligations.

4. USER agrees to establish an irrigation water account with FULTON COUNTY and shall, beginning June 1, 2016, pay for irrigation water used by USER on its property at FULTON COUNTY's established irrigation rate, as may be adjusted from time to time by the governing body of FULTON COUNTY. The current rate for irrigation water is \$5.80 per 1000 gallons (the "Irrigation Rate"). Failure to pay assessed irrigation charges may result in the interruption of service to USER.

5. As USER has an irrigation water meter in place with service from the former reuse line, no installation or capacity fee shall be charged by FULTON COUNTY. However, USER shall be responsible for any piping or plumbing modifications necessary to make its irrigation

system functional. USER further agrees that the water received from the former reuse line shall be used for irrigation purposes only and only upon USER's property, with any redirection or unauthorized transfer of the water by USER for other uses or purposes being a material breach of this Termination Agreement.

6. USER, on behalf of itself and all persons or entities claiming by, through or under them, and their respective heirs, successors and assigns, hereby fully, completely and finally waives, releases, remises, acquits, and forever discharges and covenants not to sue FULTON COUNTY, and FULTON COUNTY's respective officers, affiliates, successors, representatives, agents, or assigns with respect to any and all claims, demands, suits, manner of obligation, debt, liability, tort, covenant, contract, or causes of action of any kind whatsoever, at law or in equity, including without limitation, all claims and causes of action relating to or arising out of the Reuse Agreement, the Agreement and its termination pursuant to this Termination Agreement. USER hereby acknowledges and agrees that the release set forth herein is a general release and USER further expressly waives and assumes the risk of any and all claims for damages which exist as of the date and time of execution of this Termination Agreement, including all claims of which USER does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect USER's decision to enter into this Termination Agreement. USER further agrees that it has accepted the terms and conditions specified herein as a complete compromise of matters involving disputed issues of law and fact arising from or that could have arisen under both the Reuse Agreement and the Agreement, and USER assumes the risk that the facts or law may be otherwise than believed.

7. In consideration of the waiver and release granted in Paragraph 6 above, FULTON COUNTY hereby agrees to extend to USER a Credit in the amount of Fifty-Eight Thousand and

00/100 Dollars (\$58,000.00) towards future balance(s) on USER's irrigation water account. The Credit shall post to USER's irrigation water account on the Effective Date of this Termination Agreement and shall thereafter be applied automatically to all irrigation charges accrued by USER, whether for potable or non-potable water, beginning with the next billing cycle. The Credit is irrevocable, nontransferable and shall only terminate upon: (i) exhaustion of the Credit; (ii) closure of the account by USER; (iii) agreement of the Parties, or (iv) the occurrence of an intervening Change in Law as set forth in paragraph 11 herein, whichever occurs first.

8. If, by June 1, 2018, FULTON COUNTY's proposed reuse water line is not yet operational and no other non-potable irrigation water supply is available to USER from another source on commercially reasonable terms, USER may continue to purchase potable water from FULTON COUNTY for irrigation of USER's property at the Irrigation Rate (subject to governmental restrictions, including but not limited to EPD guidelines and restrictions as may be amended from time to time) until such time that the reuse water line is operational.

9. If, by June 1, 2018, FULTON COUNTY's proposed reuse water line is not yet operational and no other non-potable irrigation water supply is available to USER from another source on commercially reasonable terms, FULTON COUNTY shall, on June 1, 2018, extend to USER an additional credit in the amount of Twenty Nine Thousand and 00/100 Dollars (\$29,000.00) ("Reuse Liquidated Damages") towards future balance(s) on USER's irrigation water account, which shall be considered an "Additional Credit" and shall be subject to the same terms and conditions set forth in Paragraph 7 of this Termination Agreement. The Parties intend that the Reuse Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge and agree that USER's harm caused by a delay in the completion of the proposed

reuse water line would be impossible or very difficult to accurately estimate at the time of contract, and that the Reuse Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such a delay. FULTON COUNTY's payment of the Reuse Liquidated Damages is FULTON COUNTY's sole liability and entire obligation and the USER's exclusive remedy for any delay in the completion of the proposed reuse water line.

10. FULTON COUNTY agrees to provide USER with additional metered connection points at locations along the reuse water line in the future, , and to permit USER to access and use FULTON COUNTY'S easement to extend and connect to the reuse water line in the area as shown on Exhibit A, which is attached hereto and incorporated by reference herein, provided that all costs associated with tapping into the line and extending the line are borne by USER alone, USER provides prior notice to FULTON COUNTY and receives any and all required permits for the extension and/or connections, and USER agrees to pay the prevailing rates as established by FULTON COUNTY for all reuse customers at all times for water from the additional connection points.

11. It is expressly agreed that, notwithstanding any other provisions herein, FULTON COUNTY shall not be liable to USER, incur any penalty, or otherwise be obligated to perform under this Termination Agreement, if an intervening Change in Law occurs. A Change in Law shall mean the coming into effect of applicable federal, state and local laws, rules, regulations, ordinances, decree, standards, guidance, or any applicable judgment of a relevant court of law or regulatory agency which directly and adversely affects FULTON COUNTY's performance under this Termination Agreement in a material way (other than a Change in Law effected by FULTON COUNTY itself). FULTON COUNTY is further entitled to take all reasonable steps necessary to mitigate its potential exposure as a result of such a Change in Law; provided,

however, that if any irrigation water account credit granted by FULTON COUNTY herein is determined to be illegal, invalid or unenforceable for any reason by virtue of a Change in Law occurring prior to the date on which the proposed reuse water line becomes operational, FULTON COUNTY shall substitute a cash payment payable to the USER in the amount equal to (i) The Credit (as such may be increased by an Additional Credit, if appropriate, pursuant to Paragraph 9 above) *minus* (ii) the aggregate cumulative amount of Credit to the USER's water account as established pursuant to paragraph 7 hereof that has been actually applied to such water account to reduce payments owing by the USER thereunder during the period from the Effective Date to the effective date of the Change in Law (the "Credit Liquidated Damages"). The Parties intend that the Credit Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge and agree that USER's harm caused by such a Change in Law would be impossible or very difficult to accurately estimate at the time of contract, and that the Credit Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such a Change in Law. FULTON COUNTY's payment of the Credit Liquidated Damages is FULTON COUNTY's sole liability and entire obligation and the USER's exclusive remedy for any Change in Law. Payment of the Credit Liquidated Damages shall be made in full within sixty (60) days of the date on which the Change in Law becomes effective. Upon such payment, all credits accrued and applied hereunder shall be extinguished and shall be of no further force and effect.

12. Upon the delivery of and acceptance of reuse water, the Parties agree to act in accordance with the requirements set forth in the Georgia Environmental Protection Division's Guidelines for Water Reclamation and Urban Water Reuse, as revised.

13. Neither the payment of any sums nor the execution of this Termination Agreement shall be construed as an admission of liability or fault by either Party. Any and all liability is expressly denied by the Parties.

14. This Termination Agreement sets forth the entire agreement by and among the Parties and fully supersedes any and all prior statements or understandings by and among the Parties pertaining to the subject matter of this Termination Agreement. The Parties affirm that the only consideration for them signing this Termination Agreement is that stated herein, that no other promise, representation, or agreement of any kind has been made to or with them by any person or entity to cause them to execute this document.

15. Should any part, term or provision of this Termination Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid parts, terms or provisions shall be deemed not to be part of this Termination Agreement.

16. This Termination Agreement is made and entered into in the State of Georgia and shall in all respects be interpreted, enforced, and governed under the laws of said state. The language of all parts of the Termination Agreement shall in all cases be construed as a whole according to its fair meaning and purpose.

17. This Termination Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one Party.

18. This Termination Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Facsimile signatures shall be accepted the same as an original signature. A photocopy of this



Agreement may be used in any action brought to enforce or construe this Termination Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this TERMINATION OF AGREEMENT FOR POTABLE WATER to be executed under seal as of the date first above written.

**THE CITY OF JOHNS CREEK**

ATTESTED:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mike Bodker, Mayor

APPROVED AS TO FORM:

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

**FULTON COUNTY, GEORGIA**

ATTESTED:

\_\_\_\_\_  
Clerk to the Commission

By: \_\_\_\_\_  
John H. Eaves, Ph.D., Chairman  
Fulton County Board of Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the County Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David Clark  
Director of Public Works