



SPLOST 2011 FUNDING AGREEMENT

This SPLOST 2011 Funding Agreement (the “Agreement”) is made and entered into as of the 20th day of February, 2018 (“Effective Date”) by and between Piedmont Healthcare, Inc., with a principal office address of 1800 Howell Mill Road, Suite 850, Atlanta, GA, 30318, (hereinafter “Piedmont”), and Newton County, Georgia, a political subdivision of the State of Georgia, acting by and through its governing authority, the Newton County Board of Commissioners (hereinafter “Newton County” or “County”), collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, as amended (the “Act”), authorizes the imposition of a one percent County Special Purpose Local Option Sales Tax (“SPLOST”) for purposes of financing capital outlay projects for the use and benefit of the County and qualified municipalities within the County; and

WHEREAS, SPLOST collections may fund, among other things, a “capital outlay project or projects within the [County] and consisting of a hospital or hospital facilities that are owned by a county, a qualified municipality, or a hospital authority within the [County] and operated by such county, municipality, or hospital authority or by an organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code, which operates the hospital through a contract or lease with such county, municipality, or hospital authority,” O.C.G.A. § 48-8-111(a)(1)(K); and

WHEREAS, the Newton County Medical Center is owned by the Newton County Hospital Authority and operated by the 501(c)(3) tax-exempt non-profit Piedmont Healthcare, Inc. through a lease with the Newton County Hospital Authority; and

WHEREAS, on March 15, 2011, voters approved a referendum to impose a special one percent sales and use tax in Newton County for a period of time not to exceed six years and for the raising of an estimated amount of \$57,600,000 for specified projects (“SPLOST 2011”); and

WHEREAS, one of the projects approved by the voters was the design and expansion of the Newton County Medical Center Emergency Room; and

WHEREAS, in accordance with the SPLOST Intergovernmental Agreement approved by the Newton County Board of Commissioners on December 21, 2010, \$4,000,000 was allocated for the aforementioned project; and

WHEREAS, collection of SPLOST 2011 funds commenced July 1, 2011, and \$4,000,000 in SPLOST funding has accrued and is available for the aforementioned project.

WHEREAS, Piedmont Healthcare, Inc. has contracted with McCarthy Building Companies, Inc. for general construction services under a Master Agreement dated November 10, 2016, and for a project to expand and renovate of the emergency room at Piedmont Newton Hospital under

Project Addendum No. 1, dated September 12, 2017, at a guaranteed maximum price of Seven Million, Three Hundred Twenty One Thousand, Five Hundred and Seventeen Dollars (\$7,321,517) (the Master Agreement and Project Addendum No. 1, collectively, the "ER Construction Contract"); and

WHEREAS, the owner of the capital improvements to be built under the ER Construction Contract will be Piedmont Newton Hospital, which itself is owned by the Newton County Hospital Authority and leased to Piedmont Healthcare, Inc.; and

WHEREAS, in view of the aforementioned recitals, the County desires to transfer \$4,000,000 in SPLOST 2011 funds to help fund the ER Construction Contract.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgments and agreements contained herein, together with other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

A. ACCURACY OF RECITALS

1. Each of the Parties represents and warrants that the foregoing recitals to this Agreement are true and correct, and each recital is incorporated herein as substantive and not precatory language. Each of the Parties hereby acknowledges that in entering into this Agreement, the other Party is expressly relying on the truth and accuracy of the recitals.

B. FUNDING AMOUNT AND USE

1. **Funding Amount.** The County will pay Piedmont \$4,000,000.00 of collected SPLOST 2011 funds to help pay for the cost of the ER Construction Contract.
2. **Timing of Payments.** From time to time, Piedmont may present the County with a request for payment accompanied by one or more invoices from McCarthy Building Companies, Inc. for work done under the ER Construction Contract. The County shall pay Piedmont the amount stated in each payment request (up to the amount shown in the presented invoices) within 30 days from receipt of the request, or 30 days following the resolution of any reasonable dispute over a request.
3. **Use of Funding.** The funds paid by the County to Piedmont under this Agreement shall be used exclusively to make payments for construction work under the ER Construction Contract. Notwithstanding any other provision of this Agreement, Piedmont shall not under any circumstances spend such funds for any purpose not authorized by Georgia's SPLOST statute, O.C.G.A. § 48-8-110 et seq. Piedmont shall not consent to any amendment to the ER Construction Agreement that would result in the project becoming ineligible for funding under the SPLOST statute.
4. **County's Limited Obligations.** The County's financial obligation to fund the expansion and renovation of the Piedmont Newton Hospital Emergency Room is limited solely to

collected SPLOST funds in the amount stated above. Piedmont is responsible for the ER Construction Contract, and the County shall bear no responsibility or liability, under the ER Construction Contract or otherwise, to any contractors or subcontractors on the project contemplated by that contract. If the term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the term, and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year absent the County's provision of written notice of non-renewal to Piedmont at least five (5) days prior to the end of the then-current calendar year. Title to any supplies, materials, equipment, or other personal property purchased with County-provided funds shall remain with Piedmont Newton Hospital. The Parties agree that this is not a contract for the physical performance of services, a contract for public works construction subject to the provisions of O.C.G.A. Title 36, Chapter 91, or Title 36, Chapter 10, Article 2, or a contract for real property improvements subject to O.C.G.A. Title 13, Chapter 11.

C. ADDITIONAL TERMS

1. **Recordkeeping.** Each Party shall maintain financial and other records relating to this Agreement and (if applicable) the ER Construction Contract, and retain such records for at least three years after the last payment made under this Agreement. Each Party, including through any auditors retained by that Party may, except where prohibited by law, obtain copies of such records for any reasonable purpose, including preparation of financial audits.
2. **Entire Agreement.** This Agreement constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.
3. **Assignment.** Piedmont covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the County.
4. **Authority to Contract.** Each Party covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind it to the terms of this Agreement, if applicable.
5. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Piedmont agrees that, during performance

of this Agreement, Piedmont, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Piedmont agrees to comply with all applicable implementing regulations and shall include the provisions of this Section in every subcontract for services contemplated under this Agreement.

6. **Successors and Assigns.** Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.
7. **Applicable Law.** The Parties shall comply with all applicable Federal, State, and local laws, rules and regulations. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Newton County, Georgia.
8. **Captions and Severability.** The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible.
9. **Notices.** All notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the party at the addresses given below, or at a substitute address previously furnished to the other party by written notice in accordance herewith:

NOTICE TO THE COUNTY shall be sent to:

Newton County Finance Director
1113 Usher Street – Suite 204
Covington, GA 30014

NOTICE TO PIEDMONT shall be sent to:

Piedmont Newton Hospital
Chief Financial Officer
5126 Hospital Drive
Covington, GA 30014

11. **Waiver of Agreement.** No failure by the County to enforce any right or power granted

under this Agreement, or to insist upon strict compliance by Piedmont with this Agreement, and no custom or practice of the County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the County's right to demand exact and strict compliance by Piedmont with the terms and conditions of this Agreement.

12. **No Third Party Rights.** This Agreement shall be exclusively for the benefit of the Parties hereto and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
13. **Sovereign Immunity.** Nothing contained in this Agreement shall be construed to be a waiver of the County's sovereign immunity or any individual's qualified good faith or official immunities.
14. **Sectarian Institution.** Piedmont specifically acknowledges the requirements of the Constitution of the State of Georgia, which provides, in part, that "[n]o money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution." GA CONST Art. I, § 2, ¶ VII. Piedmont confirms that it is not a sectarian institution and that it will not contract for services provided to the County pursuant to this Agreement with any sectarian institution.

IN WITNESS WHEREOF, Piedmont and County have set their hands and seals as of the Effective Date first provided above.

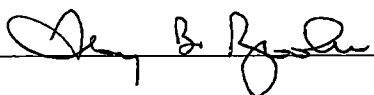
[SIGNATURES ON FOLLOWING PAGE]

PIEDMONT HEALTHCARE, INC.



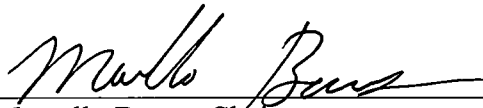
By: Eric Bour, M.D.
Its: President/Vice President (Corporation)

[CORPORATE SEAL]
(required if corporation)

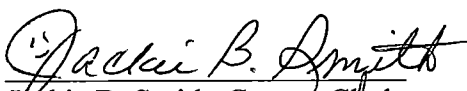
Attest/Witness: 

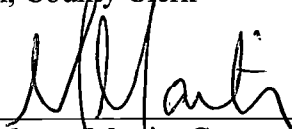
By: Troy B. Brooks
Its: CFO
((Assistant) Corporate Secretary if corporation)

NEWTON COUNTY, GEORGIA



Marcello Banes, Chairman
Newton County Board of Commissioners

Attest: 
Jackie B. Smith, County Clerk

Approved as to form: 
Megan Martin, County Attorney

