

ATLANTA-FULTON COUNTY WATER RESOURCES COMMISSION*

***Editor's note:** This division codifies an agreement adopted by the board of commissioners on May 28, 1986.

Cross references: Environment, ch. 26; utilities, ch. 82.

Sec. 102-671. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Coverage means the required minimum percentage by which net operating revenues, as defined in this section, must exceed the highest annual principal and interest payment on the debt instruments used to finance the project. Such coverage requirement shall be contained in a contract between the borrower and the lender.

Facilities or the project means the raw water intake, raw water supply lines, raw water reservoir, water treatment plant and other related appurtenances in Fulton County, to be jointly constructed, owned and operated by the parties to this division.

Indirect costs means those reasonable and necessary costs incurred for a common or joint purpose benefiting more than one cost object, and such costs are not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved.

Net interest rate means the aggregate interest rate for debt instruments with several principal maturity dates and several coupon interest rates. The net interest rate is determined by multiplying each principal maturity amount by its corresponding number of years to maturity; and dividing the sum of these products into the total interest (plus or minus discounts or premiums, respectively) to be paid over the entire life of such debt instruments.

Net operating revenues means those remaining revenues generated by the sale of potable water produced by the facilities after all reasonable and necessary direct costs (including depreciation) and indirect costs of operating and maintaining such facilities have been paid.

Operating costs means those reasonable and necessary direct costs (including depreciation) and indirect costs of operating and maintaining the facilities. Indirect costs shall be determined in accordance with generally accepted accounting principles. Depreciation shall be calculated on a straight line basis over estimated useful life.

Project costs means those costs which are reasonable and necessary for the completion of the project including, but not necessarily limited to:

- (1) The cost of acquiring land, rights-of-way and easements;
- (2) Amounts paid for materials, equipment, labor, bond issuance, professional and other services, insurance and bonds under contracts awarded in connection with

the project;

- (3) Any additional staff within either government necessary for project administration and contract management; and
- (4) Payment for temporary utilities and utility relocations related to and incurred during the project-in-progress period as may be agreed to by Atlanta and Fulton County.

Project costs incurred by Atlanta and Fulton County shall be free of any and all handling charges or special fees beyond those normally included in the conduct of business within the respective governments.

(Res. of 5-28-86, § 1)

Cross references: Definitions generally, § 101-2.

Sec. 102-672. Name of joint venture.

The name of the joint venture is the Atlanta-Fulton County Water Resources Commission.

(Res. of 5-28-86, § 2.1)

Sec. 102-673. Purpose of joint venture.

The purpose of the joint venture is to develop plans for, acquire the necessary sites and governmental permits for and to construct and operate a water treatment plant and appurtenances in North Fulton County, Georgia, to serve the joint needs of Atlanta and Fulton County in assuring an adequate supply of potable water for the citizens of Atlanta and Fulton County. The water produced by the plant shall be delivered to the parties to this contract for their use. Additionally, the joint venture shall make investigations and coordinate additional joint planning and development for the efficient utilization of the water resources.

(Res. of 5-28-86, § 2.2)

Sec. 102-674. Powers and duties of the joint venture.

The joint venture shall fulfill the purposes set forth in section 102-673, and in so doing the joint venture shall have, subject to the terms, conditions and limitations set forth in this division, the following powers and duties:

- (1) To plan, develop, construct and operate, maintain and keep or cause to be maintained and kept, the facilities in good repair, working order and condition, and from time to time to make or cause to be made, all needed and proper repairs, renewals, replacements and improvements, so that the facilities may be properly and advantageously operated at all times for the benefit of the citizens of Atlanta and Fulton County.
- (2) To make long-range plans for the joint development, management and utilization of water resources.
- (3) To provide, in accordance with the terms of the joint venture agreement, all

funds and financial arrangements necessary to carry on the functions of the joint venture.

- (4) To faithfully observe, perform and discharge all of the conditions, actions, liabilities and obligations that are or will be imposed upon it.
- (5) To perform all other lawful acts and functions necessary to accomplish the purposes of the joint venture.

(Res. of 5-28-86, § 3.1)

Sec. 102-675. Management of the joint venture.

- (a) *Generally.* The decision-making body of the joint venture shall be a management commission.
- (b) *Management commission.* There shall be a management commission of the joint venture (the "commission"), which shall consist of seven members, three from Atlanta and three from Fulton County, with each member having one vote. Membership shall include: the Mayor of Atlanta, the President of the City Council of Atlanta, and one councilmember appointed by the president of the city council and approved by the mayor; the Chairperson of the Fulton County Board of Commissioners and two commissioners selected by the Fulton County Board of Commissioners; and one person employed by neither Atlanta nor Fulton County who shall be known as the "independent member" of the commission. Said independent member shall be elected by vote of the other members to a term of two years, with the ability to serve successive terms, and shall at all times be a resident of Fulton County or forfeit membership. Officials of Atlanta and Fulton County who are members of the commission shall serve without compensation. Should any of the members representing the respective parties die, become disabled, resign or for any reason cease to be connected with the governmental entity which appointed him or her, the appointing party shall promptly, by written notice served upon the other party, name his or her successor. Upon the resignation or inability of the independent member to complete a term, the other members shall elect a new independent member to a full term.
- (c) *Commission meetings.* The first meeting of the commission shall be prior to July 1, 1986, on a date agreed upon by the Mayor of Atlanta and the Chairperson of the Fulton County Commission. At the first meeting, a temporary chairperson shall be elected, and nominations submitted for an independent member. An organizational meeting of the commission at which the independent member shall be elected shall be convened by the temporary chairperson as soon as is practicable following the first meeting. Thereafter, the commission shall meet at a minimum within February, May, August and November of each year and at such times as the commission shall determine for consultation and transaction of the commission's business. Special meetings may be called by the chairperson or by any three members of the commission upon ten days' written notice.
- (d) *Conduct of meetings.* No action shall be taken unless approved by a majority of members present and voting, except as hereinafter provided. A quorum of five members of the commission shall be required to conduct the business of the joint venture. In the event that the vote of the commission upon any proposition should result in a tie, then such proposition shall be submitted in writing to the members following the meeting at

which the vote was taken. Said members shall record their votes in writing and mail same to the chairperson within five days of receipt of the proposition. If such balloting still results in a tie, then such proposition shall be submitted to the Senior Judge of the Fulton County Superior Court, who shall refer the proposition to any disinterested person whom said judge may deem qualified to decide such proposition and the decision of said person to whom said judge refers said proposition shall be final and conclusive on the commission.

- (e) *Officers.* The commission shall elect from among its members a chairperson, one or more vice chairpersons, a secretary and a treasurer. The office of secretary and treasurer may be combined. The commission may also elect an assistant treasurer who need not be a member of the commission. The treasurer and any assistant treasurer shall be bonded, at the expense of the joint venture, in such amount as the commission shall determine.
- (f) *Committees.* The commission shall appoint an advisory committee composed of no more than four staff members from Atlanta and no more than four staff members from Fulton County. The advisory committee shall attend all meetings of the commission and provide advice and consultation to the commission. The commission may appoint such committees as it may determine from its membership or from the professional staff of each joint venturer and from the personnel of its consulting engineers to assist it in the performance of its duties, and prescribe the purpose, responsibilities, duties and procedures of such committees and the times of meeting.
- (g) *Powers of the commission generally.* As agent for the joint venturers, the commission shall have the following powers and duties:
 - (1) To formulate the plans for the acquisition of sites and all necessary easements for the facilities; to formulate developmental plans, including engineering, construction and financing plans, for the construction and use of the facilities.
 - (2) To contract with either joint venturer or a private entity for the operation of the facilities.
 - (3) To select a general manager as provided hereafter.
 - (4) To establish, review, update and implement plans and procedures for such orderly additions and improvements to the facilities as are necessary to carry out the purposes of the joint venturers.
 - (5) To make long-range plans for additional joint efforts in utilization and management of water resources.
 - (6) To establish the policies and procedures for the operation and maintenance of the facilities.
 - (7) To establish the cost allocation to be charged for the water delivered to the respective distribution systems of Atlanta and Fulton County, based upon metered water flows and finished water pumping costs.
 - (8) To apply for and hold the necessary state permits, to be issued independently to and in the name of Atlanta and Fulton County.
 - (9) To apportion any annual deficits from operations to Atlanta and Fulton County in

proportion to the amount of water delivered from the facilities to each.

- (10) To develop financial plans and procedures to ensure efficient operation of the facilities.
 - (11) To submit an annual budget which includes personnel positions, classifications and salary ranges, and an emergency reserve by September 15 of each year to Atlanta and Fulton County for approval. An amended budget may be submitted from time to time to Atlanta and Fulton County for approval.
 - (12) To coordinate operation of the facilities with the operation of the Atlanta and the Fulton County water systems.
 - (13) To contract for goods and services, subject to the following limitations:
 - a. The funds for such goods and services are available to the commission in line item appropriations of the budget approved by Atlanta and Fulton County.
 - b. Such contracts or purchases do not exceed \$50,000.00, except that contracts exceeding that amount are hereby authorized (1) for goods or services for which the entity providing same is listed by name in the budget approved by Atlanta and Fulton County or (2) when the chairperson of the commission certifies that emergency circumstances exist and that failure to contract for goods or services to correct such circumstances would result in the loss of operations of the facilities and that insufficient time is available to secure specific approval of the contract by Atlanta and Fulton County.
 - c. Such contracts are made pursuant to purchasing and minority participation procedures as determined by the commission.
 - (14) Regardless of the amount and when authorized by Atlanta and Fulton County to execute all contracts that are reasonable and necessary for the construction of the facilities, including professional and consultant contracts, provided that the funds for same are available to the commission in specific line items appropriations of the budget approved by Atlanta and Fulton County.
 - (15) Without limiting the generality of the above and when authorized by Atlanta and Fulton County, to contract for, acquire and hold, lease and dispose of real and personal property of every kind and character for its corporate purposes in the joint name of Atlanta and Fulton County pursuant to this agreement as contained in subsection (g)(14) of this section.
 - (16) To undertake such other responsibilities as shall be agreed upon from time to time by Atlanta and Fulton County.
- (h) *Records; certain actions require approval.* Subject to the provisions of this agreement, the commission shall determine the procedures and methods by which it will act, and shall cause its actions to be recorded in books kept for that purpose. No action of the commission related to the following responsibilities shall be taken unless approved at a regularly scheduled quarterly meeting, or unless approved by a majority of those voting at a meeting at which all members of the commission are present, or unless approved at a meeting which has been duly called on ten days' notice and a quorum is present:

- (1) The establishment of compensation, within the range established in the approved budget, and employment of a general manager.
 - (2) The establishment of compensation, within the limits established in the approved budget, and the authorization of contracts for the services of consulting and design engineers.
 - (3) The establishment of compensation, within the limits established in the approved budget, and the authorization of contracts for the services of any consultant.
 - (4) The establishment of policies for the operation and maintenance of the facilities.
 - (5) The establishment of the cost allocation for water delivered to the respective water distribution systems of Atlanta and Fulton County, on the basis of metered water flows.
 - (6) The selection of an outside certified public accountant to conduct the annual audits of the joint venture.
- (i) *Prohibited actions.* The commission is hereby expressly prohibited from performing the following acts, which are understood and agreed to be authorized only through legislation adopted by Atlanta and Fulton County:
- (1) Execution of contracts and contract amendments having a cost exceeding \$50,000.00 unless otherwise provided for in subsection (g)(13), (14) or (15) of this section.
 - (2) Application for and acceptance of loans or grants-in-aid unless otherwise authorized by legislation adopted by Atlanta and Fulton County.
 - (3) Increasing the overall annual operating and capital budgets.
 - (4) Incurring any liability in excess of the amount appropriated in the operating and capital budgets unless otherwise provided for by legislation adopted by Atlanta and Fulton County.

(Res. of 5-28-86, § 3.2)

Sec. 102-676. General manager.

The commission shall provide for a general manager for the facilities, who shall be responsible for implementing the programs, policies, plans and decisions formulated or made by the commission, and for supervising the day-to-day operations of the facilities.

- (1) The commission shall employ by contract a general manager. The commission shall select compensation for, and employ by contract, such person, who shall be the chief administrative officer of the facilities. He or she shall serve at the pleasure of the commission and shall report to, and be responsible to, the commission, a committee or subcommittee, as designated by the commission.
- (2) The general manager shall be an employee of the joint venture by contract. If the joint venture decides to operate the facilities rather than to contract out its operations, all members of the staff of the general manager and the operating personnel of the facilities shall be selected by the general manager, pursuant to

employment policies established by the commission, and shall be employees of the joint venture, but shall be covered by a civil service system and pension program as determined by the commission.

- (3) If a private entity is selected to undertake the day-to-day operation of the facilities, it shall be employed by contract and be subject to the direction of the general manager.

(Res. of 5-28-86, § 3.3)

Sec. 102-677. Consulting engineers.

The commission shall utilize the services provided by the current contract between Atlanta and Williams-Russell and Johnson, Inc., and Jordan, Jones & Goulding, Inc., consulting engineers (the "engineers") for consultation, analysis, investigation, projections, design and construction services for the facilities. The assignment of all terms, conditions and obligations of said current contract to the commission shall be effective without further action of Atlanta 90 days after the execution of this division, or at such earlier date as the general manager may designate in writing to Atlanta.

(Res. of 5-28-86, § 3.4)

Sec. 102-678. Legal counsel.

The commission shall utilize the legal services of the Atlanta and Fulton County legal departments in a form to be determined by the commission.

(Res. of 5-28-86, § 3.5)

Sec. 102-679. Compensation of joint ventures.

Except as specifically provided in this division, neither Atlanta nor Fulton County shall charge the joint venture for any services rendered, or for any expenses incurred by the other joint venturer.

(Res. of 5-28-86, § 3.6)

Sec. 102-680. Construction contract procedures.

Following its formulation of the plans for acquisition of the necessary site locations and easements and for financing and construction of the facilities, including the estimated costs of said construction, the commission shall submit the plans to the governing bodies of Atlanta and Fulton County for final approval and for the adoption of the financial plans for funding the construction. After such approval, and after advice in writing from Atlanta and Fulton County that plans for the necessary funding have been made, the commission, through the general manager, shall provide for the necessary bidding process and letting of the construction contracts. This may consist of the letting of a joint contract obligating both Atlanta and Fulton County to the contractors, or it may consist of the execution of a contract with either Atlanta or Fulton County as the agent of the joint venture to let the contract. In any event, the bidding process and contracting procedure shall comply with all federal and state laws.

(Res. of 5-28-86, § 3.7)

Sec. 102-681. Funding of the joint venture prior to the generation of operating revenue.

- (a) Atlanta and Fulton County each agrees to appropriate and pay to the joint venture one-half of all funds as are necessary to enable the joint venture to perform its responsibilities throughout the period of planning and construction and until appropriate allocation formulas are approved and in place, based on a temporary budget to be submitted to and approved by Atlanta and Fulton County.
- (b) All funds of the joint venture shall be maintained in an account or accounts as determined by the commission, and such funds as are within the discretion of the commission shall be disbursed under such procedures as the commission shall determine.
- (c) During the period of planning and construction and prior to the establishment of cost allocation formulas, the commission may, at its discretion, appoint either Atlanta or Fulton County or both as agent or agents to hold and disburse the funds of the joint venture subject to the direction of the commission.

(Res. of 5-28-86, § 4.1)

Sec. 102-682. Capital cost of facilities.

- (a) All mutually agreeable capital costs associated with the facilities, including the reasonable and necessary cost of site acquisition, easements, legal services, planning, engineering and construction shall be shared equally by Atlanta and Fulton County. All such costs shall be agreed upon by Atlanta and Fulton County before liability for sharing shall accrue, except that, in the event either Atlanta or Fulton County shall have incurred any of the said direct cash outlay costs before the date of this agreement, then the party which has incurred such costs, as the case may be, will be credited with such costs in accounting for its share of the total cost of the facilities.
- (b) The cost of any enlargement, improvement or modification of the plant, intake or reservoir which requires capital investment, shall not be undertaken until recommended by the commission and approved by Atlanta and Fulton County.
- (c) It is mutually agreed that Atlanta will be credited its full share of the costs for the purchase of the plant/reservoir site of the facilities, in consideration of its release and dismissal of all claims against Fulton County for water and sewer services provided to agencies of Fulton County from January 1, 1978, through December 31, 1984, and in consideration of Fulton County's agreement to pay all charges for water and sewer services accrued on and after January 1, 1985; provided that Fulton County will be credited \$2,531,485.00 toward the payment of sewer charges from the principal and interest held by Atlanta and derived from the South Fulton Surcharge Program. The sum shall be paid from an account to the city to cover the outstanding sewer charges on Fulton County facilities from January 1, 1985, to present, and the balance of such sum shall be used and applied as a credit against future sewer charges. Fulton County agrees to pay all future charges within 15 days after receipt of a bill for water and sewer services.
- (d) It is mutually agreed that Fulton County will reimburse Atlanta for one-half of the direct

land and appraisal costs paid by Atlanta for the acquisition of the intake site of the facilities, within 30 days of receipt of an invoice detailing such costs, which invoice will be transmitted promptly upon the conclusion of pending litigation for such acquisition.

(Res. of 5-28-86, § 4.2)

Sec. 102-683. Ownership of the facilities.

- (a) Atlanta and Fulton County shall jointly own the land, treatment plant, intake, raw water lines and reservoir of the facilities on a 50-50 basis, as tenants in common.
- (b) Immediately upon execution of the agreement from which this division is derived, Atlanta shall deed Fulton County an undivided one-half interest in the water intake site, and Fulton County shall deed to Atlanta an undivided one-half interest in the primary site of the facilities.
- (c) Both parties agree to seek permits equal to the design rate of production and further agree to operate the facilities at the maximum permitted rate of production.
- (d) Atlanta and Fulton County shall each own, and be entitled to receive and distribute through their respective distribution systems, 50 percent of the total supply of water treated by the plant at any time or 50 percent of capacity, whichever is greater. To the extent that the share of Atlanta or Fulton County shall exceed its needs, Atlanta or Fulton County or Atlanta and Fulton County jointly through the commission shall be entitled to enter into short-term agreements with, and sell to, any other governmental entity the excess of such share. If either Atlanta or Fulton County desires to sell any surplus supply, it shall first offer the surplus to the other, which shall have a right of first refusal, for a period of 30 days after receiving the offer, according to allocation formulas; and the terms of such agreement to sell surplus water shall not exceed a period agreed to by Atlanta and Fulton County.

(Res. of 5-28-86, § 4.3)

Sec. 102-684. Operating costs.

- (a) The commission shall allocate the monthly operating costs of the facilities to Atlanta and Fulton County on the basis of the pro rata share of water delivered to each party. The pro rata shares shall be determined by monthly meter readings.
- (b) The joint venture shall bill to Atlanta and Fulton County monthly, at the allocated cost for all water delivered to the distribution system of each, which invoice shall be paid within 15 days after receipt to the joint venture.

(Res. of 5-28-86, § 4.4)

Sec. 102-685. Support services.

The commission may contract with Atlanta or Fulton County or a private contractor to provide purchasing, payroll, accounting, legal and other support services required for the operation of the facilities. The cost of the services will be treated as an operating cost of the plant and shall be treated as all other operating costs.

(Res. of 5-28-86, § 4.5)

Sec. 102-686. Financial management.

The commission may contract with either Atlanta or Fulton County or a private contractor as financial manager for all functions related to the construction and operation of the facilities.

(Res. of 5-28-86, § 4.6)

Sec. 102-687. Accounting methodology.

The designated entity agrees to accumulate all costs associated with construction and operation of the facilities in a set of accounts separate and apart from any other activities and to maintain such accounts in accordance with generally accepted accounting principles.

(Res. of 5-28-86, § 4.7)

Sec. 102-688. Capital financing.

The parties hereby agree that each shall be responsible for financing 50 percent of the project costs as such costs are defined in section 102-671. Nothing contained herein shall be construed to preclude one party from initially financing the other party's share of project costs, or a portion thereof, provided that the party providing such financing shall be entitled to recover from the other party the amount financed, plus coverage, if any, for the facilities, at an interest rate equivalent to the net interest rate, as defined in section 102-671, on the debt instruments used to finance the project or at an interest rate to be mutually agreed upon by both parties. Notwithstanding the foregoing, it is acknowledged and agreed that the financing of the plant/reservoir site, and the intake site, of the facilities will be undertaken as provided in section 102-682(c) and (d).

(Res. of 5-28-86, § 4.8)

Sec. 102-689. Grants-in-aid.

- (a) The parties hereby agree to make their best efforts to obtain available federal and/or state grants-in-aid funding for the project. Irrespective of the amount of grant-in-aid funding, each individual party may obtain for the facilities, total grant-in-aid received shall be credited equally to each party's share of project costs.
- (b) It is further agreed that any portion of project costs funded from grant-in-aid proceeds shall be excluded from the computation required to determine the amount of project costs to be recovered by one party from the other if such party provides financing of the project on behalf of the other party.

(Res. of 5-28-86, § 4.9)

Sec. 102-690. Depreciation reserve account.

The parties hereby agree that an amount equal to the monthly depreciation expense shall be deposited monthly into a depreciation reserve account. These funds shall only be used to renew and/or replace capital components of the facilities.

(Res. of 5-28-86, § 4.10)

Sec. 102-691. Term of joint venture.

The joint venture shall continue for a term of 50 years, unless terminated by mutual consent of the parties or by an order of a court of competent jurisdiction.

(Res. of 5-28-86, § 5.1)

Sec. 102-692. Default.

Each of the following shall constitute an event of default by either party to the agreement from which this division is derived:

- (1) If such party shall fail to pay promptly any of its financial obligations under the term and conditions of this division when such financial obligations shall become due and payable, and such default continues for a period of 90 days after the receipt of notice from the joint venture of such nonpayment.
- (2) If such party shall fail to be represented by any commission members or alternates at two consecutive regularly scheduled meetings of the commission when at least three of the other joint venturer's commission members are present.
- (3) If such party shall fail to keep, perform or observe any other material term, covenant or condition of this division and such default continues for a period of 30 days after the receipt of written notice from the other party of such failure.

(Res. of 5-28-86, § 5.2)

Sec. 102-693. Remedies for events of default.

- (a) Upon the occurrence of an event of default by a party to this agreement other than the event of default contained in section 102-692, the joint venture, besides any other rights or remedies it may have, shall have the right to deny such party the use of the facilities either in whole or in part until such event of default has been cured. Moreover, commission members of the party which committed an event of default shall not participate in the vote of the commission regarding remedies to be pursued following an event of default by such party.
- (b) With respect to the occurrence of an event of default by either party to this agreement as contained in section 102-692, the commission members who are in attendance for the regularly scheduled meeting which constituted an event of default are hereby granted authority to conduct the business of the joint venture and make decisions which shall be legally binding on both parties in accordance with the terms and conditions of this division.

(Res. of 5-28-86, § 5.3)

Sec. 102-694. No prejudice to other agreements.

Both Atlanta and Fulton County have other agreements with other entities touching the subject of this division. It is the intention of the parties that this division is limited solely to the covenants and agreements expressly set forth herein and that it shall not, by implication or otherwise, prejudice any existing rights of either party or any covenants, contracts, agreements or arrangements which now exist between Atlanta and Fulton County or other parties, nor the right of either Atlanta or Fulton County to enter into such covenants, contracts, agreements or arrangements in the future.

(Res. of 5-28-86, § 5.4)

Sec. 102-695. Enabling action.

Atlanta and Fulton County agree that they will each enact such ordinance and resolutions as may be necessary to carry out the purposes and intent of this division. Further, the parties pledge to each other their support and assistance, and agree to take such action as may be necessary, in order to obtain from the general assembly, and if necessary, the people of Georgia by constitutional amendment, such further additions to the authority now vested in them by virtue of the constitution and laws of Georgia, as may now or may hereafter become necessary to carry out the intent of the parties hereto, whether expressed or implied.

(Res. of 5-28-86, § 5.5)

Sec. 102-696. Saving clause.

Should any subparagraph, paragraph or other portion of this division be held for any reason to be unconstitutional or otherwise void, the remaining portions of this division shall not be affected thereby, but shall continue in full force and effect.

(Res. of 5-28-86, § 5.6)

Chapters 103--105 RESERVED